



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
REGIONAL POLICY and EMPLOYMENT, SOCIAL AFFAIRS and EQUAL OPPORTUNITIES

**PROGRAMMING PERIOD 2007-2013:**  
**AIDE-MÉMOIRE FOR THE DESK OFFICERS**

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## Foreword

The entry into force on 31 July 2006 of the new regulations on the Structural Funds and Cohesion Fund represents a major step in the final preparations for the period 2007-2013. This is different from previous periods, as marked by the fact that in the new generation of programmes, there is a more strategic approach to cohesion policy. The new programmes are to be delivered on the basis of clearly identified cohesion policy priorities at the EU level - Community Strategic Guidelines - which set the framework for national strategic priorities. Central to the strategic approach is the strengthening of the links between cohesion policy and the Lisbon agenda for growth and jobs.

The National Strategic Reference Framework is a symbol of one of the main changes for the new period as compared to the current programming period. The National Strategic Reference Frameworks, and the operational programmes which come afterwards, are the means through which Member States and regions indicate their intentions for the delivery of the Community Strategic Guidelines, taking account of their specific needs and opportunities.

This aide-mémoire for the 2007-2013 period sets out how the provisions of the new regulations can be applied in the different chronological phases from the initial strategic negotiations through to the financial management and control, monitoring and evaluation of the programmes. It brings together different parts of the legal texts in order to create operational advice on all the main aspects relating to programming, while highlighting new elements for 2007-2013. The aide-mémoire neither departs from, nor replaces, the basic legal texts. This aide-mémoire has been prepared as a guide for Commission services in order to facilitate consistent implementation of the regulations. In the interest of transparency, the text may be shared with interested Member States.

The aide-mémoire is divided into nine chapters and includes nine annexes. Each chapter can be read as a stand-alone document. Relevant articles of the regulations are provided directly in the text of each chapter to facilitate the reading and understanding of the legal requirements.

The aide-mémoire is therefore a key document as we look forward to the new programmes. A successful implementation which combines the strategic vision with sound, efficient and consistent management is one of the surest ways of demonstrating the added value of European cohesion policy.

Graham Meadows

Nicolaus van der Pas

# CHAPTER 1: NATIONAL STRATEGIC REFERENCE FRAMEWORK

## 1. INTRODUCTION AND SUMMARY OF MAIN ELEMENTS

Le Cadre de Référence Stratégique National (CRSN/NSRF) est un nouveau type d'instrument du système de programmation applicable au cours de la période 2007-2013. Ce n'est pas un instrument de gestion, comme l'était le Cadre Communautaire d'Appui (CCA) utilisé au cours des périodes précédentes; il se situe au niveau des priorités politiques tout en intégrant des éléments clés de mise en oeuvre.

The NSRF is one of the key elements of the strengthened strategic approach which in itself constitutes the main change as compared to the current programming period.

The strategic approach means strengthening the links between cohesion policy and the Lisbon agenda. It also means clearly identified cohesion policy objectives on the EU level translated into national priorities. The NSRF should establish a clear and coherent policy response to contribute to the achievement of Community objectives:

- consistent with the National Reform Programmes developed under the Lisbon process

and

- responding to priorities of the Community Strategic Guidelines for Cohesion.

The national strategic reference framework sets out the strategy framing the operational programmes co-financed by the ERDF, ESF and the Cohesion Fund. The document applies 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. Further, for regions of the Convergence objective, strategic interaction with the EAFRD and EFF should be addressed.

The NSRF is prepared by Member States after consultation with relevant partners and in dialogue with the Commission with a view to ensuring a common approach.

L'objectif de cet aide-mémoire est de fournir des indications pratiques aux rapporteurs pour qu'ils puissent vérifier que les documents adressés par les Etats membres comme CRSN répondent aux dispositions fixées par les règlements du Conseil relatifs aux FEDER, au FSE et au FdC et, de ce fait, remplissent toutes les fonctions attendues d'un CRSN.

Il s'agit également de préciser les mécanismes de préparation, d'adoption et d'utilisation du CRSN et ses liens fonctionnels avec les autres documents du système de programmation.

The text of this fiche is structured in the following way:

- La préparation du CRSN par l'Etat membre: partenariat
- Analysis of the socio-economic situation
- Strategy
- Operational programmes and financial tables
- Le principe d'additionalité
- Key mechanisms for co-ordination
- The Commission decision-making procedure related to the NSRF

## 2. GUIDELINES FOR THE DESK OFFICERS

### 2.1. La préparation du CRSN par l'Etat membre: partenariat

#### Article 11 of General Regulation

1. *The objectives of the Funds shall be pursued in the framework of close cooperation, (hereinafter referred to as "partnership"), between the Commission and each Member State. Each Member State shall organise, where appropriate and in accordance with current national rules and practices, a partnership with authorities and bodies such as:*
  - (a) *the competent regional, local, urban and other public authorities;*
  - (b) *the economic and social partners;*
  - (c) *any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality between men and women.*

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

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

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

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

#### Article 28 (1) of General Regulation

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

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



The national strategic reference framework is prepared by the Member State:

- after consultation with relevant partners
- according to the modalities that it considers most appropriate and according to its national rules and practices and institutional structure
- in dialogue with the Commission, with a view to ensuring a common approach.

The NSRF is prepared in full compliance with the respective institutional, legal and financial powers of each partner category.

To demonstrate that the consultation with relevant partners as referred to in Article 11 and as stated by Article 28(1) of the Regulation, is fully respected, it would be useful that the draft NSRF mentions the partners and other actors that have been involved in its preparation and the actions taken to facilitate a wide involvement, particularly

- how the involvement of all actors respects principles of transparency; the process of identification of relevant partners should be made public and be clear,
- the responsibilities of actors and the scope of their participation,
- the organisation of work so as to facilitate the widest possible participation of all actors. This would mean that appropriate communication channels are established between all actors involved in the preparation of the NSRF, relevant documents are submitted sufficiently in advance, non-technical language is used, etc.

Member States should be encouraged to seek an active, broad and balanced participation of the relevant partners in the process.

### **Relevant partners**

According to art. 11 (1) the indicative list of partners refers to competent regional, local and other public authorities, economic and social partners, any other appropriate body representing civil society, environmental partners, non-governmental organisations, and bodies responsible for promoting equality, such as those promoting equality between men and women and equal treatment and the right of non-discrimination of ethnic minorities.

The following stakeholders could be involved in the preparation of the NSRF, as appropriate:

- Stakeholders representing the region(s) and cities concerned, as well as local, urban and other authorities, where relevant. Relevance could be identified in terms of level of representation of these stakeholders in the regions covered by the Structural Funds and the Cohesion Fund assistance (i.e. stakeholders having their representation in most of the regions covered

by the assistance, or stakeholders from those regions receiving the highest financial assistance)

- The economic and social partners and any other appropriate bodies, for example those most competent in specific themes/sectors on which a Member State wishes to concentrate in its programmes, including non-governmental organisations
- Bodies representing civil society such as those promoting equal treatment and the right of non-discrimination of ethnic minorities

Involvement of partners should take into account a need to promote equality between men and women and sustainable development.

## **2.2. Analysis of the socio-economic situation**

### Article 27 (4)(a) of General Regulation

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

*(a) an analysis of development disparities, weaknesses and potential, taking into account trends in the European and world economy*

- The analysis constitutes the basis for the development of the strategy. The analysis of the socio-economic situation should be consistent with the National Reform Programmes, without repetition. In the light of the NRP, the analysis within the NSRF should be limited to approx. 10 pages.
- The analysis for the NSRF must present the socio-economic development disparities taking into account
  - trends in the European and world economy
  - social disparities and disadvantaged groups
  - urban areas, diversification of rural economies and areas dependent on fisheries
- The analysis should reveal driving forces and development tendencies for the whole territory, including the sectoral/thematic and national/regional dimension of socio-economic development. The identification of strengths, weaknesses, opportunities and threats in the form of a SWOT analysis is a useful tool to identify the strategic choices made. If relevant, in addition to global analysis of problems and priorities, a differentiation between Convergence and Competitiveness regions can be made
- An analysis of the specific territorial needs should be undertaken to identify and justify the territorial priorities to be covered by the strategy
- For the Convergence regions concise analysis relating to the performance and needs of the public administration and public services

- Member States may make use of an ex-ante evaluation, including the assessment of interventions implemented in the previous programming period.
- Pour cette analyse, les Etats membres devraient dans la mesure de possible utiliser des sources d'information, statistiques, indicateurs et autres données établies au niveau communautaire qui permettent une comparaison entre les différents Etats membres<sup>1</sup> et, si possible, entre les différentes régions et différents villes.

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<sup>1</sup> Sources d'information (non-exhaustive):

- données du Programme National de Réforme (stratégie de Lisbonne, y compris sur l'emploi.)
- indicateurs de Stratégie Européenne pour l'Emploi
- indicators used for the National Action Plans on Social Inclusion
- défis identifiés et recommandations formulées pour l'Etat membre concerné dans les Orientations intégrées approuvées par la Commission (GOPE, Emploi et Marché Intérieur),
- statistiques régionales élaborées par Eurostat et introduites dans la base de données REGIO,
- statistics from the Urban Audit
- indicateurs structurels figurant dans le rapport sur la mise en œuvre de la stratégie de Lisbonne, et conséquences en termes de points positifs et points à améliorer,
- indicateurs d'innovation (European Innovation Scoreboard), indicateurs Marché Intérieur (Internal Market Scoreboard),
- indicateurs sur l'inclusion sociale et références pour l'éducation et la formation,
- statistiques intégrant la dimension de l'égalité des chances entre les hommes et les femmes

### 2.3. La stratégie

#### Article 27 (2) of General Regulation

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

#### Article 27 (4)(b) of General Regulation

4. *(b) the strategy chosen on the basis of that analysis, including the thematic and territorial priorities. Where appropriate these priorities shall include actions relating to sustainable urban development, the diversification of rural economies and areas dependent on fisheries*

#### Article 27 (4)(d) of General Regulation

4. *(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 9.3.*

#### Article 9 (3) of General Regulation

3. *The assistance co-financed by the Funds shall target the European Union priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs (2005 to 2008) as set out by Council Decision 2005/600/EC of 12 July 2005<sup>2</sup>. To this end, in accordance with their respective responsibilities, the Commission and the Member States shall ensure that 60% of expenditure for the Convergence objective and 75% of expenditure for the Regional competitiveness and employment objective for all the Member States of the European Union as constituted before 1 May 2004 is set for the abovementioned priorities. These targets, based on the categories of expenditure in Annex IV, shall apply as an average over the entire programming period.*

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

*Each Member State concerned shall contribute to these targets.*

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

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<sup>2</sup> OJ L 205, 6.8.2005, p. 21.

### 2.3.1. *Defining the strategy*

- The strategy of the NSRF shall cover the 2007-13 programming period. It should identify strategic priorities and objectives to be implemented by the Operational Programmes.
- The strategy should present a consistent and clear response to identified challenges and needs through the identification of coherent objectives and priorities.
- The priorities of the NSRF should be implemented through one or more Operational Programmes (OPs) or priority axes, which allow for the achievement of its objectives.
- In the light of the analysis of the socio-economic situation and of the content of the National Reform Programmes, which build on the Integrated Employment and the Economic Guidelines under the Lisbon process, the strategy of the NSRF should take into account any national source deemed relevant and shall be consistent with:
  - Recommendations made by the Council in relation to the Integrated Employment and the Economic Guidelines<sup>3</sup> and with the Annual Progress Report prepared in the framework of the Lisbon process (see chapter 2 for details)
  - EU priorities for Cohesion Policy, as set out in the Community Strategic Guidelines.

The National Action Plan on Social Inclusion and Social Protection may also be relevant in this context.

Where Employment Recommendations are not addressed, this should be justified.

- With the exception of the elements in article 27 of the general regulation (the reference indicated in brackets), the Regulation does not specify the content of the strategy. Nevertheless, given the purpose and the nature of the document it is recommended that it would include the following main elements:
  - Overall objective(s) of the strategy,
  - Identification (including justification) and the description of a limited number of thematic and

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<sup>3</sup> In line with the Commission working document, where recommendations are not addressed, this should be justified.

territorial priorities for intervention for the "Convergence" and "Competitiveness and Employment" regions that allow the achievement of the overall objectives of the NSRF and that would form the basis for operational programmes.

- Territorial priorities (relevance and consistency) should be justified on the basis of the territorial needs identified in the analysis, including actions relating to urban areas, the diversification of rural economies and areas dependent on fisheries, where appropriate (art. 27(4)b).
- In the light of the chosen priorities and objectives, quantified targets for socio-economic development, against which OP targets are set, providing basis for reporting on their contribution to the National Reform Programme.
- An urban development strategy consistent with national and regional development policies. According to circumstances, the strategy may have wider territorial focus and may encompass priorities at sub-city, city or regional level. Special attention should be paid to the role of cities in implementing the Lisbon objectives and, where relevant, to the question of social cohesion.
- The response given to the findings of the ex-ante evaluation of the NSRF, if the Member State chooses to do one (see below and annex 1: Working paper n° 1 on ex-ante evaluation).

#### **La validation de la stratégie: intégration d'une évaluation ex-ante**

Art. 47 of the general regulation, gives the possibility to the Member States to carry out an ex-ante evaluation of the NSRF. Some MS have carried out ex-ante evaluations, e.g. of their National Development Plans, on their own initiative.

The purpose of the ex-ante evaluation is to optimise the allocation of resources and to improve the quality of programming. For detailed recommendations on ex-ante evaluation see the Commission's Working Paper n° 1 (Annex 1).

For reasons of transparency, the Commission recommends that within the NSRF the process of ex-ante evaluation is reflected in the form of a short recapitulation. The following information could be included:

- the evaluation as an interactive process (who carried out the evaluation, how was the interaction organised between the evaluator and the responsible authority and socio-economic partners),
- which were the main evaluation questions,
- which were the main recommendations and findings of the evaluation,

- |   |
|---|
| <ul style="list-style-type: none"><li>– which recommendations of the evaluation were taken into account (or not),</li><li>– source for the full text of the evaluation.</li></ul> |
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- The strategy should also ensure:
  - That equality between men and women and the integration of the gender perspective is promoted, and that the principle of non-discrimination is respected, with special regard to accessibility for people with disabilities and to the full economic and social participation of ethnic minorities.
  - Consistency between cohesion policy and relevant Community, national, sectoral and regional policies, in particular the National Rural Development Strategy the National Strategic Plan for Fisheries.
  - The implementation of the strategic priorities in the framework of sustainable development with the goal of protecting and improving the environment.
- The strategy should also contain information on the contribution of the NSRF to the earmarking exercise for the Lisbon objectives, where appropriate, according to Article 9(3) and Annex IV of the General Regulation (see box below). It must be noted that the earmarking process does not replace categorisation of intervention at programme level (Article 11(1) and Annex II of Commission's Implementing Regulation).

### **Earmarking for the Lisbon objectives**

The Regulation sets the earmarking targets at 60% of expenditure for the Convergence Objective and 75% of expenditure for the Regional competitiveness and Employment Objective, applied as an average over the entire programming period of all Member States of the Union as constituted before 1 May 2004. Targets for each Member State will take account of the starting point based on data for 2000-06. The objective is that all Member States concerned should achieve the earmarking target as an average over the period.

Although earmarking is not binding for the new Member States and acceding countries, they are also encouraged to set targets and increase their efforts relative to the baseline situation in the 2000-2006.

As a general rule, the earmarked categories are those defined in Annex IV of the General Regulation. The Commission and each Member State concerned may decide to complement in an appropriate manner the list of categories of Annex IV. Where this is the case, adequate justification should be provided in this section of the NSRF, in order to allow the Commission to decide on the inclusion of such additional categories.

It is recommended that the text of the NSRF indicates how the Operational Programmes will contribute to the earmarking process, i.e. each Operational Programme could provide an indicative figure, expressed as a percentage of total expenditure under the programme, for its contribution to the EU priorities of promoting competitiveness and creating jobs, including meeting the objectives of the Integrated Guidelines for Growth and Jobs 2005-2008. The presentation of the earmarking targets would be facilitated by using for example tables as provided at the end of this chapter which can be presented electronically via the computer system of data exchange SFC 2007.

#### *2.3.2. For regions of the "Convergence" objective*

- Administrative capacity

For regions of the "Convergence" objective, the strategy should demonstrate which actions are envisaged for reinforcing the Member State's administrative efficiency, on national, regional and local level. In anticipation of the ultimate Commission decision this section should outline a strategic approach developed for strengthening institutional and administrative capacity which should correspond to the national reform or comprehensive modernisation programme adopted to improve the effectiveness of public administration and public services. The section should outline the main elements of the reform/modernisation and indicate the main priorities for action. Such interventions should take the form, as appropriate, of a separate OP or a priority of a programme. It should be noted that in the case of the Cohesion countries the actions in this field cover the whole territory of the country (ESF Regulation, Article 3(3), i.e. in case a Member State eligible for the Cohesion Fund includes both



Convergence and Competitiveness Objective regions, actions set out in art. 3(2) of the ESF Regulation would be eligible in both Objectives, while maintaining separate financial management of each Objective.

- Social Partners

In addition to the consultation of social partners in the preparation of the NSRF, the strategy should also set out how the Member State will support capacity building and joint actions by social partners.

### 2.3.3. *European Territorial Co-operation*

- Within their NSRF, Member States may, if they so wish, set out the strategy for the “European territorial co-operation” objective, without prejudice to the future choices of the other countries concerned.
- If a Member State decides to include the European Territorial Co-operation objective in its NSRF, it is likely that, given the need to agree the co-operation approach and individual programme content with the other participating countries in the various programmes, the strategy section on this objective will be presented in broad terms in relation to the cross-border and transnational strands.
- While the Regulation does not specify the content of the strategy section on this objective, it can be expected that it would include elements such as:
  - a description of the overall vision of co-operation activity for the Member State concerned,
  - its importance within the national context,
  - potential links with other Structural Funds programmes.
- Given the nature of the interregional co-operation strand, it is not considered necessary to address this element in the NSRF.
- If a Member State decides to include the European Territorial Co-operation objective in its NSRF, co-operation with third countries which provide their own financing for such co-operation (e.g. Norway, Switzerland, Iceland) should be included, where possible, as these programmes will be supported via the Co-operation Objective.
- In contrast, the inclusion of the approach for cross-border co-operation along the external borders of the Union in the East, with the Western Balkans and in the Mediterranean is optional, since they will be supported via the European Neighbourhood and

Partnership Instrument and the Instrument for Pre-Accession, as appropriate.

- This chapter should be relatively short (approx. 10 pages).

## 2.4. Operational programmes and financial tables

### 2.4.1. *La liste des programmes opérationnels qui découlent des choix stratégiques*

#### Article 27 (4)(c) of General Regulation

4. (c) *the list of operational programmes for the ‘Convergence’ and ‘Regional competitiveness and employment’ objectives;*

- La liste des programmes opérationnels devrait être cohérente avec les priorités thématiques et territoriales retenues dans la stratégie. A strategic priority may be implemented by one or several Operational Programmes, but the link between the OPs and the priorities should be evident. Dans cette liste, les titres/descriptions des programmes devraient donc comporter les éléments permettant:
  - d’identifier ce programme par rapport aux choix stratégiques du CRSN,
  - de vérifier la cohérence et la complémentarité entre les programmes couverts par le CRSN et avec les plans stratégiques nationaux applicables au développement rural et au secteur de la pêche. This information must be included in the NSRF of the Member States eligible for the Cohesion Fund.
- De vérifier la cohérence et la complémentarité avec les interventions de la BEI et des autres instruments financiers existants. This information must be included in the NSRF of the Member States eligible for the Cohesion Fund.
- The list of Operational Programmes should be broken down by objective ("Convergence" and "Regional competitiveness"), and by fund.

The use of multi-objective programmes should be limited to justified cases, where a coherent strategic approach is needed throughout a Member State (which geographically encompasses both the Convergence and Competitiveness and Employment objective). Examples of where such a strategic approach could be followed for ESF are the introduction of reforms in education and training systems and institutional capacity. In case a Member State chooses to propose a multi-objective programme, it should provide adequate justification for it in the National Strategic Reference

Framework. Such programmes should be agreed only when their advantages are clearly evident. Moreover, a clear separation of the financial allocations by objective must be set out, a separation which must be maintained throughout all stages of financial management. The financial allocation between objectives should be defined on a pro-rata basis, relying on realistic and justifiable criteria, taking into account the objective and nature of activities concerned.

- If a Member State decides to use a national contingency reserve (art. 51 of General Regulation), the NSRF should contain information on how it will be applied (either to a specific national programme or within operational programmes).

For details on reserves (the contingency reserve and national performance reserve) and their implication for financial management, see chapter 6.

- Member States may also, if they so wish, list the cross-border and transnational programmes, and the annual ERDF allocations to these programmes, that they intend to submit to the Commission. However, care should be taken in making use of this option, as only after discussions with the neighbouring countries can Member States specify either the programmes that they will submit or the allocations they will make.

#### 2.4.2. *L'allocation annuelle indicative de chaque fonds pour chaque programme*

##### Article 27 (4)(e) of General Regulation

##### *4. (e) the indicative annual allocation from each Fund by programme;*

- Les allocations annuelles indicatives par fonds par programme devraient refléter les choix stratégiques. Moreover, for the Convergence objective, the amount of the total annual appropriation provided for under the EAFRD (Rural Development) and the EFF (Fisheries) should be provided. The allocations must be consistent with Financial Perspectives. Les informations chiffrés a fournir sur les allocations annuelles indicatives sont indiqués dans le tableau dans l'annexe XV de la Règlement de la Commission.
- In case of multi-objective programmes a clear separation of the financial allocations by objective must be set out in the financial tables. Thus, the financial information must appear under both the Convergence and Competitiveness objectives with the corresponding financial allocation. As all programmes including multi-objective programmes will be given a specific CCI number the information relating to a multi-objective programme must

appear in the financial table under the same number for both objectives.

- Where a Member State decides to establish a national performance reserve (art. 50 of General Regulation), the financial table of the annual breakdown of EU funding for the Operational Programmes should set out financial allocation for the national performance reserve .

For more information please see chapter 6 on Financial Management.

It is recommended that the allocation method to apply to the regional operational programmes under the Convergence objective should be the one agreed by the European Council and enshrined in Annex II to the general regulation. For the Regional competitiveness and employment objective, the final allocations, including the aid intensity, should reflect the different situations of regions with regard to the challenges they face in terms of growth, competitiveness or job creation and their economic, social and geographical situations.

## **2.5. Le principe d'additionnalité**

### Article 27 (4)(f) of General Regulation

4. (f) for regions of the 'Convergence' objective only:  
(iii) the information required for ex-ante verification of compliance with the additionality principle referred to in Article 15.

The plans submitted shall include information as regards additionality in accordance with Article 15. For the ex ante verification of additionality for the Convergence Objective , Article 15 of the general regulation stipulates that the Commission and the Member State concerned shall determine the level of public or equivalent structural expenditure that the Member State shall maintain in all the regions covered by this Objective during the programming period. As a general rule, the average annual level of expenditure shall be at least equal to the amount of average annual expenditure in real terms attained during the previous programming period, taking account of a number of specific circumstances mentioned in Article 15 (3).

Where a Member State is unable to prove on 30 June 2016 that additionality has been respected, the Commission may, in relation to the degree of non respect of this obligation proceed to a financial correction in accordance with the procedure laid down in article 100 of the general regulation.

As regards the methodology, the key data are actual payments (in contrast to commitments or programmed expenditure) on eligible measures carried out in a given period in the Convergence Objective regions taken together. Table in Annex XIX of the Commission Implementing Regulation indicates the information which is needed to determine the actual or estimated annual

average expenditure in the period 2000-2006 and the planned annual average expenditure in the period 2007-2013, both in million euro 2006 prices.

For more details see the Commission's Working Paper n° 3 on additionality (Annex 3).

## 2.6. Key mechanisms for coordination

### Article 27 (4) of General Regulation

*The national strategic reference framework shall contain the following elements:*

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

### Article 27 (5) of General Regulation

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

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

- Coordination on a strategic level is a crucial element to achieve synergy between different policies and consequently maximise the impact of socio-economic development of the country. This aspect should be duly taken into account when defining the strategy (please see section 2.3.1. "Defining the strategy").
- Furthermore, and obligatory for the Member States eligible under the Cohesion Fund and optional for other Member States, the NSRF must contain details of the mechanisms and procedures for ensuring the coordination between operational programmes themselves, between the assistance of the Funds of the Community cohesion policy and:
  - the assistance from the EAFRD and the EFF, including the main guiding principles as regards the demarcation line with the actions supported by these Funds,

- the interventions of the EIB and of other existing financial instruments.

Where relevant the Member States should be also encouraged to provide in the NSRF information on the mechanisms and procedures ensuring coordination between cohesion policy and the relevant national, sectoral, regional and urban policies of the Member State concerned.

In addition, even though this is not obligatory, Member States should be encouraged to clarify coordination mechanisms regarding state aids.

## **2.7. Les mécanismes décisionnels de la Commission**

### *2.7.1. L'examen de la stratégie et des priorités nationales*

#### Article 28 (2) of General Regulation

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

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

- The NSRF is prepared by the Member State in dialogue with the Commission. Within this partnership the role of the Commission is to support the Member States, particularly in ensuring that the strategies (NSRF) are consistent with the National Reform Programmes and that the financial resources are focussed on the Lisbon priorities.
- Once received from the Member States, the analysis of a NSRF is undertaken jointly and in close co-operation between DG REGIO and DG EMPL. Other relevant services are also consulted.
- Le rapporteur de DG REGIO et DG EMPL doit vérifier si le document présenté par l'Etat membre peut être considéré comme un CRSN, à savoir:
  - s'il contient tous les éléments qui découlent logiquement des dispositions des règlements et des OSC (voir checklist ci-dessous )  
– check de recevabilité
  - s'il comporte une argumentation logique, basée sur une analyse de la situation conduisant à des choix stratégiques puis à des programmes opérationnels assortis d'allocations financières en conséquence – check de qualité

- Before the NSRF is formally submitted the dialogue between the Member State and the Commission starts on informal basis.

During the informal stage of consultation, the geographical desks of both DGs jointly establish a working draft Position Paper, using the agreed structure for assessment of the NSRF (see Structure for assessments and appreciation of NSRF at the end of this chapter). The working draft Position Paper provides a basis for wider discussions with other services in order to develop a coherent view which can be presented to the Member State.

The flowchart below illustrates graphically the procedure for Commission decision on the NSRF and includes both the informal stage and the formal decision-making procedure.

### 2.7.2. *La décision sur la liste des PO et l'allocation indicative par fonds.*

#### Article 28 (3) of General Regulation

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

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

- La prise de décision porte sur la liste des programmes opérationnels et des montants des allocations financières demandés à l'article 27 paragraphe 4 du règlement général. Cela implique une justification approfondie par rapport à la stratégie et aux thèmes prioritaires.
- For the "Convergence" objective the decision applies also to the level of expenditure guaranteeing compliance with the additionality principle and the action envisaged for reinforcing administrative efficiency.

### 2.7.3. *Déroulement de la procédure d'examen et de décision*

#### ➤ Check de recevabilité

- The desk officers se base sur la check-list ci-après

- Si le rapporteur constate l'existence, dans le document présenté par l'Etat membre, de tous ces éléments d'art. 27 (4), il peut entamer la procédure d'examen et de décision. Cela ne préjuge pas des observations de la Commission sur la qualité de ces éléments, ni de la décision de la Commission.
- Si la Commission constate l'absence de certains de ces éléments, il signale formellement via SFC 2007 à l'Etat membre que la Commission ne pourra entamer la procédure de décision que lorsqu'il lui aura adressé tous les éléments manquants.

➤ Check de qualité

Après réception de tous les éléments nécessaires, si la Commission constate que leur qualité est insuffisante, il demande à l'Etat membre d'apporter les améliorations appropriées.

- Procédure pour la décision de la Commission
- The decision-making procedure includes intra-service and inter-service consultation<sup>4</sup> followed by the adoption of the decision taken by the College as described below. La durée de la procédure interne de prise de décision est calculée après avoir déduit le délai de réponse des Etats Membres.
- According to the regulation, the Commission will take note of the NSRF and the priority themes chosen by the Member State. The College will therefore be able to appreciate the content of the NSRF.
- The appreciation of the NSRF forms the basis for the Commission decision and constitutes an annex to the decision. The appreciation should be based on the structure provided below.
- In the standard case, all the open questions should be resolved in the negotiations with the Member States prior to the Commission decision. For the majority of cases, the work done on an informal basis should lead to an unproblematic decision-making procedure.
- In this case at the same time as taking note and giving its appreciation of the NSRF, the College would adopt the decision foreseen in Article 28(3) of the draft General Regulation. This decision will cover the list of OPs (which will consist of a list of regional programmes and national programmes or a combination of both depending on the national context) and the corresponding financial allocation by OP and by year. For the Convergence

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<sup>4</sup> Given the shared responsibility of DG REGIO and DG EMPL on the NSRF, DG EMPL must receive all the contributions from other services (use function "co-responsible" in the CIS-Net application). For the internal procedures to be followed within DG REGIO, refer to note Adonis n° 230659 of 31 July 2006.

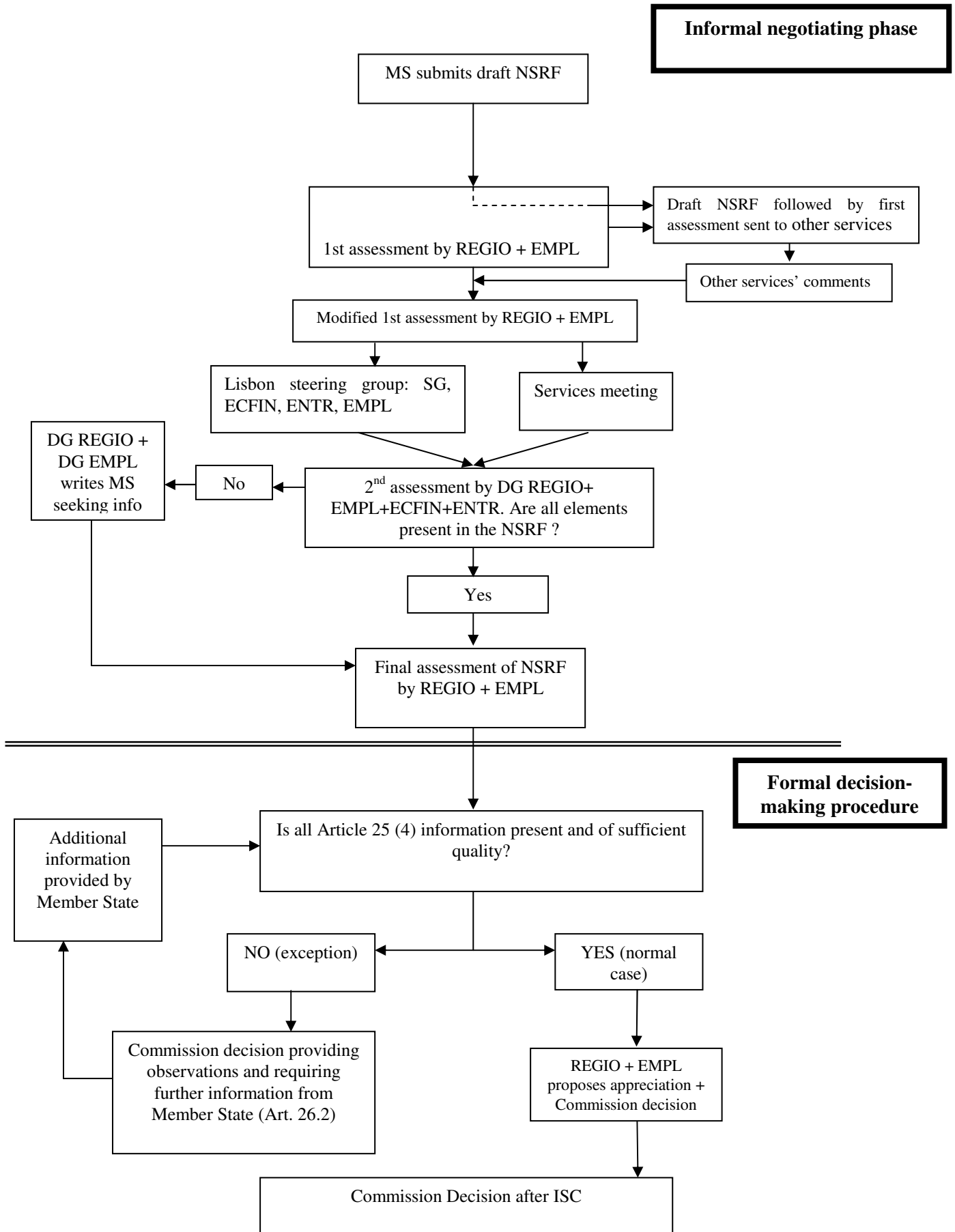


objective the decision will cover the additionality data and actions envisaged for improving the administrative efficiency.

- If it is found that there is a fundamental disagreement on the NSRF, the procedure foresees a decision of the Commission providing observations and requiring further information from the Member State in accordance with Article 28(2) of the General Regulation.

Since the NSRF is a basis for the operational programmes, an agreement and the Commission decision on the NSRF must precede the Commission decision on each OP. However the Commission's decision on the adoption of the OP can be taken at the same time as the decision on the NSRF.

# Flowchart on procedure for Commission decision on NSRF



## Admissibility check: check-list for the NSRF

- Analysis of socio-economic situation**, identification of weaknesses and potentials
- Description of strategy**, including the thematic and territorial priorities,
- Description of earmarking**: how expenditure of Convergence and Regional competitiveness objective contribute to EU priorities of promoting competitiveness and creating jobs, including meeting the objectives of the integrated guidelines for growth and jobs 2005-2008 (optional for the Member States that entered in or after 2004) (see also tables at the end of this chapter)
- Key elements for implementation and the elements subject to the Commission decision**:
  - **List of Operational Programmes** ensuring consistency with the strategic priorities chosen
  - The indicative annual allocation from each fund by programme including the **financial table** (see table in Annex XV of the Com. Impl. Reg.) and conformity with financial perspective\*
  - For **Convergence Objective** only:
    - the amount of the total annual appropriation provided for under the EAFRD and the EFF,
    - the additionality table (see table in Annex XIX of the Com. Impl. Reg.),
    - actions envisaged for reinforcing administrative efficiency.
- For the **Member States eligible under the Cohesion Fund: mechanisms for coordination** between OPs, assistance from the Funds, the EAFRD, EFF, interventions of EIB and other financial instruments

*\* to be available in the SFC 2007.*

## **Structure for assessments and appreciation of NSRFs**

### **1. Preparation of the NSRF**

- 1.1 National preparation process and timetable, including evaluation arrangements, EIA, SEA (if applicable)
- 1.2 Internal Commission preparation process

### **2. Analysis of the Socio-economic Situation**

- 2.1. Recent economic developments
- 2.2 Administrative structure
- 2.3 Experience from current and past programming periods
- 2.4 Socio-economic analysis
- 2.5 SWOT analysis

### **3. Strategy**

- 3.1 Objectives of the NSRF
- 3.2 Consistency with National Reform Programme (NRP)
- 3.3 Consistency with Community Strategic Guidelines (CSG)
- 3.4 NSRF Internal consistency and quantification
- 3.5 Earmarking targets by operational programme

### **4. Operational Programmes and financial tables**

- 4.1 Operational Programme (OP 1)
- 4.2 Operational Programme (OP 2)...
- 4.n Operational Programme (OP n)

### **5. Additionality and administrative efficiency**

- 5.1. Administrative efficiency
- 5.2. Ex-ante verification of additionality

### **6. Key elements of implementation**

- 6.1 Implementation of the Strategy
- 6.2 Internal coordination arrangements for ERDF, CF, ESF (For Cohesion Fund countries)
- 6.3 Coordination with other instruments of assistance

### **7. Overall assessment**

- 7.1 Major elements missing in the draft NSRF
- 7.2 Comments and key issues to be addressed with the MS

### **8. Where necessary: observations under Article 28 (2) of the General Regulation (3 months deadline)**

## Sample tables for the presentation of earmarking per Member State\*

Convergence objective					
Code	Priority themes	Contributing OPs	Community amount programmed to the category by OP (EUR)	Total Community amount programmed to the category (EUR)	Share of category within total Community allocations to Convergence objective (%)
<b>Subtotal</b>	<b>Research and technological development (R&amp;TD), innovation and entrepreneurship</b>			<b>71,4</b>	<b>14%</b>
01	R&TD activities in research centres	OP1	10	25,5	5%
		OP2	15,5		
02	R&TD infrastructure etc.	OP1	12	35,7	7%
		OP2	23,7		
....	....			10,02	2%
<b>Subtotal</b>	<b>Information society</b>				<b>16%</b>
11	Information and communication technologies etc.				7%
....	....				9%
<b>Subtotal</b>	<b>Improving access to employment and sustainability</b>				<b>20%</b>
65	Modernisation and strengthening labour market institutions				10%
....	....				10%
<b>Subtotal</b>	....				<b>10%</b>
<b>Total Community financial allocation to earmarked categories</b>				<b>306</b>	<b>60%</b>
<b>Total Community financial allocation to Convergence objective</b>				<b>510</b>	<b>100%</b>

Regional competitiveness and employment objective					
Code	Priority themes	Contributing OPs	Community amount programmed to the category by OP (EUR)	Total Community amount programmed to the category (EUR)	Share of category within total Community allocations to Regional competitiveness and employment objective (%)
<b>Subtotal</b>	<b>Research and technological development (R&amp;TD), innovation and entrepreneurship</b>			<b>62,5</b>	<b>25%</b>
01	R&TD activities in research centres	OP1	5,5	12,5	5%
		OP2	7		
02	R&TD infrastructure etc.	OP1	12	20	8%
		OP2	8		
....	....			5	2%
<b>Subtotal</b>	<b>Information society</b>				<b>10%</b>
11	Information and communication technologies etc.				14%
....	....				16%
<b>Subtotal</b>	<b>Improving access to employment and sustainability</b>				<b>25%</b>
65	Modernisation and strengthening labour market institutions				3%
....	....				7%
<b>Subtotal</b>	....				<b>15%</b>
<b>Total Community financial allocation to earmarked categories</b>				<b>187,5</b>	<b>75%</b>
<b>Total Community financial allocation to Regional competitiveness and employment objective</b>				<b>250</b>	<b>100%</b>

\* Note that the list of earmarked categories is wider for "Convergence" objective.

## **CHAPTER 2: STRATEGIC FOLLOW-UP**

### **1. INTRODUCTION AND SUMMARY OF MAIN ELEMENTS**

The Commission has proposed a more strategic approach to cohesion policy, 2007-2013. This new approach is reflected in the way that the programmes are conceived via the Community Strategic Guidelines (CSG) and the National Strategic Reference Frameworks, and also in the way that they are implemented including the reporting arrangements which are the subject of this chapter. This introductory section gives an overview of what we are trying to achieve.

The particular feature of these arrangements is that they combine a strategic reporting by MS on the contribution of programmes to the objective of cohesion policy with a specific reporting in relation to the realisation of Community priorities under the heading of the renewed Lisbon agenda. Thus, the general regulation makes explicit reference to the Lisbon process, a process which has its own specific implementation arrangements running in parallel to the implementation of cohesion policy programmes.

The parallel procedures for the Lisbon process and the preparation and implementation of cohesion policy programmes involves regular reporting in both cases including opportunities for cross-checking to ensure consistency. It is the cohesion policy regulations that provide the legal basis for cross-checking.

In the case of cohesion policy the regulations provide for (1) reporting by the Member States on two occasions (2009 and 2012) on the strategic achievements of the programmes in supporting the objectives of cohesion policy (see section 1.1 below) and (2) the preparation by the Member States of a specific section in the annual implementation reports on the National Reform Programmes (NRP) from 2008 onwards providing information on how the programmes have contributed to achieving the objectives of the Lisbon growth and jobs strategy (see section 1.2 below).

The Commission, in turn, will publish on two occasions (2010 and 2013) a strategic report summarising the national reports under (1) for the attention of the Council and the European Parliament, and it will include a section summarising the national reports under (2) in the Annual Progress Report foreseen under the Lisbon reporting framework. In both cases, a key-quantitative source of information for the strategic reports will be the information from the annual implementation reports on the operational programmes on resources committed under each of the categories earmarked as Lisbon-related (see chapter 8 section 3.5).

In the case of the Lisbon process, the need for links with cohesion policy has been recognised from the outset in the form of a political commitment. However, a key point is that it is only the general regulation that makes explicit legal provision for the cross-checking arrangements. For the first time in 2007, Member States will be required to provide information on the contribution of cohesion policy in their Lisbon annual implementation report in pursuit of their National Reform Programme (note that the term 'annual implementation report' is used here also as well as in cohesion policy).

In short, the new regulations will seek to ensure that cohesion policy genuinely plays a role in the realisation of the Lisbon agenda with the help of these robust reporting and cross-checking arrangements.

### **1.1. Cohesion policy reporting framework**

This section looks at the list of strategic documents foreseen for the conception and implementation of cohesion policy programmes. In this regard, the general regulation provides for the following elements:

- On the basis of a Commission’s proposal<sup>5</sup>, adoption by the Council with assent from the Parliament of the Community Strategic Guidelines for Cohesion, 2007-2013;
- Preparation of the National Strategic Reference Frameworks by Member States<sup>6</sup> and adoption by the Commission of operational programmes;
- Strategic reporting by Member States by the end of 2009 and 2012;
- Presentation by the Commission of a synthesis of the Member States’ strategic reports by 1 April in 2010 and 2013;
- Examination of and debate on the Commission’s strategic reports by the Council and by the other institutions.

The aim of this strategic approach is to increase transparency and the accountability of cohesion policy by involving the other European institutions. As indicated in the introduction, a key part of the dialogue foreseen with the other institutions will concern the extent to which the programmes are contributing to Lisbon objectives.

### **1.2. Lisbon reporting framework**

The Lisbon process has its own specific implementation arrangements, independent of cohesion policy. However, as indicated, links between the two policy areas have been established politically, as well as legally in the general regulation.

The Lisbon process today refers to the following. In March 2005, the Spring Council relaunched the Lisbon strategy, refocusing it on growth and employment, in accordance with the Commission’s proposals<sup>7</sup>. In taking this decision, the 2005 Spring Council concluded that Member States must do more to mobilise all the resources at national and Community levels — including cohesion policy — so that their synergies can be put to more

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A proposal was adopted by the Commission in draft form “Cohesion Policy in Support of Growth and Jobs: Community Strategic Guidelines, 2007-2013” COM (2005) 299 of 7 July 2005.

<sup>6</sup> See Chapter 1.

<sup>7</sup> COM(2005) 24 of 2.2.2005: Working together for growth and jobs – A new start for the Lisbon strategy.

effective use. This created the political link with cohesion policy. This was followed by the adoption of the Integrated Guidelines for Growth and Jobs<sup>8</sup>.

The Council also agreed a new cycle of governance for the Lisbon process which took effect from 2005. Under this framework, Member States were committed to drawing up action plans for growth and jobs, under their own responsibility, known as National Reform Programmes (NRPs) and which are based on the Integrated Guidelines. Reporting arrangements are also foreseen and in Member States' annual Lisbon implementation reports on the NRP a section on the use of the Structural and Cohesion Funds in support of the Lisbon objectives<sup>9</sup> must be included, for the first time in 2007<sup>10</sup>. It is the general regulation that provides the legal basis for this. The Commission will then present a synthesis of these reports in its Annual Progress Report to the Spring European Council for the first time in 2007.

Moreover it should be underlined that although the legal provisions applicable to Structural Funds and Cohesion Fund oblige the Member States to report on the contribution of the Funds towards supporting the Lisbon objectives only as from the 2007 Annual Progress Report the Commission will seek to ensure that the Annual Progress Report of 2006 makes reference to the NSRFs in preparation as to the new framework for advancing the Lisbon agenda.

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<sup>8</sup> “Integrated Guidelines for Growth and Jobs (2005-2008)”, COM (2005) 141, 12 April 2005 and Commission staff working paper “Working together for growth and jobs: next steps in implementing the revised Lisbon strategy”, SEC (2005) 622, 2 May 2005.

<sup>9</sup> Commission staff working paper “Working together for growth and jobs: next steps in implementing the revised Lisbon strategy”, SEC (2005) 622, 2 May 2005.

<sup>10</sup> As part of the Lisbon reporting framework, Member States will already in 2006 submit an Annual Implementation Report on the National Reform Programme.



## 2. GUIDANCE FOR DESK OFFICERS ON THE CONTENT OF THE REPORTS

Desk officers will have a major role to play in helping to ensure that the strategic dimension to cohesion policy is taken on board and that the provisions for links with the Lisbon process are in place and deliver results. The following sections look at this process from the angle of, respectively, the Lisbon process and cohesion policy.

### 2.1. Lisbon process: Member States' Annual Implementation Report on the National Reform Programme

#### Article 29 (1) and (4) of General Regulation

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

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

#### 2.1.1. *When is the Annual Implementation Report on the National Reform Programme due?*

In line with the Lisbon reporting framework, Member States will submit an annual report to the Commission on implementation of the National Reform Programme in 2006<sup>11</sup>. While legal provisions exist for the period from 2007 onwards for a section to be included on the use of the Structural and Cohesion Funds in support of the Lisbon objective, because of Member States political commitments to use cohesion policy as an instrument for the Lisbon agenda, it can be expected that elements will be included in the 2006 Lisbon Annual Implementation Report. These could cover the results of the negotiations on the NSRF.

A second cycle of governance is envisaged from 2009 onwards.

#### 2.1.2. *Content of the section on cohesion policy in the Annual Implementation Report on the National Reform Programme*

For reports from 2007, the section must follow a clear logic. Therefore, while Member States are not bound to follow any predefined template, a recommended sequence of sub-sections, are as follows:

- Socio-economic trends and consequent strategy changes

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<sup>11</sup> This is different from the Structural Funds Annual Implementation Report (Chapter 8 of the Aide-Mémoire). The SF Annual Implementation Report reviews the Structural Funds programme performance for the past year whereas the Lisbon Annual Implementation Report both analyses what has been done and outlines what is planned for the coming year.

- Achievements and challenges in relation to the implementation of priorities
- Progress in financial terms

### **Socio-economic trends and consequent strategy changes**

This sub-section should outline how each of the Operational Programme's strategies are consistent with the strategy set out in the Lisbon National Reform Programmes and the objectives set out in the NSRFs. If the OPs' strategies are subject to modifications, the nature of the modifications should be indicated in the report.

### **Achievements and challenges in relation to the implementation of priorities**

This sub-section should summarize the contribution of each Member State to the Lisbon-related objectives set out in the National Reform Programmes with a first overview in 2007, a more complete picture in 2008 which takes account of those OPs adopted later, and from 2009 onwards regular updates of how the earmarking of Lisbon-related expenditure has progressed. The annual implementation reports on operational programmes are key source of information. More detailed information on earmarking can be found in Chapter 1 on the NSRF.

### **Progress in financial terms**

This sub-section should include a summary of the budgetary resources available through the Structural and Cohesion Funds (including national co-financing) to implement the Lisbon-related measures outlined in the National Reform Programmes. This is particularly important for the first report (Autumn 2007). For subsequent reports, that is, from June 2008, the sub-section will be able to make use of the information on commitments by category contained in the operational programme annual implementation report.

#### *2.1.3. Length of the section*

Given that recommended length of the Annual Implementation Report on the National Reform Programme is 40 pages, the length of the section on cohesion policy and the detail provided should reflect the relative level of cohesion policy resources received by the Member State.

Generally speaking however, this section should be around 3-5 pages partly depending on the size of the programmes.

#### 2.1.4. *Guidance for desk officers*

**Lisbon process: the following elements should be included in the reports on the NRP submitted by the Member States:**

**For the 2006 annual implementation report on NRP**

results of the negotiations on the NSRF regarding NRP related items

**For the 2007 report, onwards:**

Which NRP priorities and/or measures are supported by the NSRF and OPs? To what extent, e.g. financial weighting? What targets have been set? This should be clearly spelled out in the 2007 Report, since a number of NRPs do not provide sufficient detail to see the link between the NRP and cohesion policy.

Provide a summary of the planned budgetary resources (Structural, Cohesion and national co-financing) to finance NRP related measures and the indicators planned to measure the progress.

**For subsequent reports:**

Provide a summary of specific commitments made and progress in achieving the targets.

How has the Member State refocused its cohesion spending on different or new NRP priorities, changed or adjusted the targets as a result?

#### 2.1.5. *What desk officers need to do and how*

It is important to maintain links with the Lisbon cycle of governance which follows-up the National Reform Programmes. This involves participation in the Lisbon-related visits to Member States, generally in early summer each year, and contributing to briefing for them. These contacts (as well as the more frequent contacts arising in the context of managing cohesion programmes, including the annual meeting) should be used to ensure that the contribution of the programmes to the Lisbon agenda is real and explicit in the text of the Lisbon annual implementation reports prepared by the Member States.

When the Commission draws up the Annual Progress Report at the end of each year the 'Country Fiches' included should have references to cohesion policy.

#### 2.1.6. *Who is responsible?*

Commission Lisbon Steering Group: SG, DG ENTR, DG ECFIN, and DG EMPL is responsible for the reception and analysis of reports. Other DGs, including DG REGIO, are asked to make individual contributions on each Member State.

## 2.2. Cohesion Policy: Member States' strategic reports

### Article 29 (2) and (3) of General Regulation

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

*a) towards implementing the objectives of cohesion policy as established by the Treaty,*

*b) towards fulfilling the tasks of the Funds as set out in this Regulation,*

*c) towards implementing the priorities detailed in the Community Strategic Guidelines on cohesion referred to in Article 25 and specified in the priorities set by the national strategic reference framework referred to in Article 27.*

*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 9 (3).*

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 practice.*

#### 2.2.1. Purpose of the strategic report

The strategic report is one of the most important innovations introduced in the new general regulation. The report is due twice during the programming period (at 2009 and 2012) and is separate from the annual implementation report on operational programme as outlined by Article 67 of the General Regulation<sup>12</sup>. In the strategic report, Member States will provide details on the contribution of the programmes towards implementing the objectives of cohesion policy, as outlined in the National Strategic Reference Frameworks and in line with the priorities detailed in the Community Strategic Guidelines on Cohesion. Member States will also be required to provide details on progress made towards fulfilling the targets set out for expenditure under both the Convergence and Competitiveness Objectives (earmarking). It is therefore a key element of the strategic follow-up of cohesion policy programmes.

During the life-time of the programmes, there will be changes in the priorities outlined in the National Strategic Reference Framework in light of changes in the socio-economic situation and labour market. Although the Member States have no obligation to inform the Commission about the modifications to the NSRF, they could include

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<sup>12</sup> See Chapter 8.

in the introductory section of the strategic report how, where appropriate, modifications to the OPs have implicitly modified the priorities of the NSRF. Modifications of the OPs will have to be negotiated in any event with the Commission in the light of the strategy defined in the NSRF.

Unlike the annual implementation report referred to in Article 67 of the General Regulation, the existence of a strategic report is **not** one of the preconditions for interim payments by the Commission. Nevertheless, the report is a regulatory requirement and given the fact that these reports will form the basis of the Commission's strategic report to the Council, Member States are strongly advised to submit the report in the most timely manner possible.

2.2.2. *When is the strategic report due?*

At the latest by the end of 2009 and 2012

2.2.3. *Content of the strategic report*

In line with Article 29 (3) of the draft General regulation, the strategic report should include the following:

- Update on the socio-economic situation and trends;
- Update on the achievements, challenges and future prospects in relation to implementation of the agreed strategy; and
- Examples of good practice.

**Update on the socio-economic situation and trends**

The update of the analysis of the socio-economic situation should reveal any changes in the socio-economic situation and labour market including reference to the regional dimension.

**Update on the achievements, challenges and future prospects in relation to implementation of the agreed strategy**

In line with Article 29 (2), the update should present progress on the contribution of the programmes to:

- The objectives of cohesion policy, particularly in terms of reduction of socio-economic and territorial disparities;
- The tasks of the Funds as set out in Article 3 of the General Regulation;
- The priorities detailed in the Community Strategic Guidelines and the objective(s) of the strategy as outlined in the National Strategic Reference Framework;

- Achievements of the priorities identified under the "Convergence" and "Competitiveness and Employment" regions with particular reference to the progress made towards the earmarking targets;

In addition, the report could provide information concerning:

- Achievement of the quantified targets for socio-economic development;
- Activities related to the National Reform Programmes under the Lisbon agenda;
- Achievements related to the implementation of employment recommendations;
- Progress linked to the implementation of the National Action Plan on Social Inclusion and Social Protection;
- Although Member States are not obliged to inform the Commission about the modifications to the NSRF, this information could be included in the introductory section of the strategic report, in particular how modifications to the OPs have implicitly modified the priorities of the NSRF.

### **Examples of good practice**

This section should include examples of good practice of projects or groups of projects co-financed by the Structural and Cohesion Funds in the 2007-2013 programming period including for example:

- Projects or groups of projects that have helped achieve the main objectives of cohesion policy;
- Projects or groups of projects directly linked to the priorities detailed in the Community Strategic Guidelines on cohesion;
- Projects or groups of projects directly linked to the objectives outlined in the National Reform Programmes.

#### *2.2.4. Length of the strategic report*

Recommended length: 20 pages.

#### *2.2.5. Who is responsible?*

The strategic report is drawn up by the national authorities and will be communicated to the corresponding DG REGIO and DG EMPL geographical units which will jointly and in close co-operation analyse the report.

## **2.3. Lisbon process: Commission's Annual Progress Report to the Spring European Council**

### Article 30 (1) of General Regulation

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

#### *2.3.1. Objective of the report*

As outlined in section 2.1, in line with the Lisbon reporting framework, Member States will submit an annual implementation report on the National Reform Programme in which a section will be included on the use of the Structural and Cohesion Funds for the first time in Autumn 2007. On the basis of these reports, the Commission will prepare an Annual Progress Report to be submitted to the Spring European Council.

#### *2.3.2. When is the Annual Progress Report due?*

January/February 2008 and thereafter annually (in line with the Lisbon reporting framework).

#### *2.3.3. Content of the section on cohesion policy on the Annual Progress Report*

This section should summarize the contributions of each Member State to the Lisbon-related objectives set out in the National Reform Programmes, including an indication of the progress made on cohesion policy expenditures related to the types of actions identified under the “earmarking” categories.

#### *2.3.4. Who is responsible?*

Commission Lisbon Steering Group: SG, DG ENTR, DG ECFIN, and DG EMPL are responsible for the drafting of the Annual Progress Report. Other DGs, including DG REGIO, are asked to make individual contributions on each Member State.

## **2.4. Cohesion Policy: Commission's strategic reports**

### Article 30(2) and (3) of General Regulation

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

*3. The Council shall examine the strategic report referred to in paragraph 2 as soon as possible after its publication. It shall be submitted to the European Parliament, the Economic*

*and Social Committee and the Committee of the Regions, and these institutions shall be invited to hold a debate on it.*

#### *2.4.1. Objective of the Commission strategic report*

On the basis of the strategic reports submitted by Member States (see section 2.2), the Commission will prepare a strategic report to be submitted to the Council, EP, Economic and Social Committee and the Committee of the Regions. The strategic report may be a separate report or a section of the cohesion reports that the Commission is required to submit on the progress made on economic and social cohesion, including the socioeconomic situation and development of the regions, as well as the integration of the Community priorities.

#### *2.4.2. When is the Commission Strategic Report due?*

At the latest by 1 April 2010 and 2013.

#### *2.4.3. Content of the Commission Strategic Report*

The report should include the following information:

- Summary of reports submitted by Member States;
- Update on how the priorities outlined in the Community Strategic Guidelines are being met;
- Update on progress made by Member States to meet the minimum targets of cohesion spending devoted directly to competitiveness, i.e. “earmarking”; and
- Examples of good practice.

#### *2.4.4. Who is responsible?*

DG REGIO will be responsible for drafting the report jointly with DG EMPL. Geographical units will be asked for structured contributions.



## CALENDAR FOR STRATEGIC FOLLOW UP

<b>Deadline</b>	<b>Submission of</b>	<b>Responsibility of</b>	<b>Content</b>	<b>Legal basis</b>
Autumn 2006 <sup>13</sup> (and then annually)	Annual Implementation Report on NRP	MS	Section on contribution of cohesion policy towards implementation of the NRP using NSRFs	Gen. Reg., Art. 29(1)
By January/Feb of each year, starting 2008 (and then annually)	Annual Progress Report to the Spring European Council	COM	Section summarising Annual Implementation Reports of MS	Gen. Reg., Art. 30 (1)
By end of 2009 and 2012	Strategic report	MS	Summary of contribution of OPs towards implementing objectives of cohesion policy, priorities of CSG and NSRF	Gen. Reg. Art. 29 (2)
By 1 April of 2010 and 2013	Commission strategic report	COM	Strategic report summarising the strategic reports of the MS – can also be a cohesion report	Gen. Reg., Art. 30 (2)

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<sup>13</sup> From 2007, a section should be included on the use of the Structural and Cohesion Funds in support of the Lisbon objectives.

# CHAPTER 3: OPERATIONAL PROGRAMMES

## 1. SUMMARY OF THE MAIN ELEMENTS

The new regulatory framework for the period 2007-13, which reflects a more strategic approach to programming, brings about numerous changes as to the content and structure of future operational programmes. With the adoption of the Community Strategic Guidelines, programming will focus more on EU-priorities and Operational Programmes will become more strategic documents. They will no longer contain description of measures. Instead, the main focus will be placed on the description of the strategy and the priorities.

The subsequent parts of an operational programme must follow a clear logic. The OP should recall the geographical *eligible area* chosen for the programme and contain the following main elements:

### 1.1. Analysis

The analysis constitutes the basis for the programme's *strategy*. The analytical part should constitute a diagnosis of the situation, identify the main challenges and obstacles as well as strengths and opportunities. The analysis should take into account the objectives of the EU cohesion and employment policy and provide a sound analysis of the particular issues in the national/regional/territorial/sectoral context.

### 1.2. Strategy

The strategy should be built on the analysis, and be consistent with the strategy set out in the Community Strategic Guidelines, the National Strategic Reference Framework and the Lisbon Reform Programmes. The strategy should set out the global and specific objectives of the Operational Programme with quantifiable indicators, and identify the main priorities for actions.

### 1.3. Priority axes

The description of priorities should outline how the objectives set out in the strategy will be achieved. It should not only focus on the description of objectives, it should provide sufficient information on the intervention areas and main activities to be implemented under the priority axes.

### 1.4. Implementing provisions

The Operational Programme must contain a section outlining the implementing provisions of the programme, including a short description of the bodies involved in the implementation, procedures and mechanisms related to monitoring and evaluation as well as information and publicity measures.

### **1.5. Financial provisions**

The financial provisions should be presented in conformity with annex XVI of the Commission implementing regulation.

### **1.6. Procedure for adoption of Operational Programmes**

The procedure to be followed by Desk Officers consists of two steps: 1) Admissibility check to verify conformity of an OP with art. 37 of the General Regulation and 2) Quality check to verify how far the OP would contribute to objectives laid down in the NSRF and in the Community Strategic Guidelines on cohesion.

## 2. GUIDELINES FOR THE DESK OFFICERS

### Article 2 of General Regulation

1. “ **Operational Programme (OP)**”: document submitted by a Member State and adopted by the Commission setting out a development strategy with a coherent set of priorities to be carried out with the aid of a Fund, or, in the case of the Convergence objective, the Cohesion Fund and the ERDF, ;
2. “**Priority axis**”: one of the priorities of the strategy in an operational programme comprising a group of operations which are related and have specific measurable goals;”

The subsequent parts of an operational programme must follow a clear logic. Therefore, while Member States are not bound to follow any predefined template, this section presents a recommended sequence of chapters, as listed below:

- Analysis
- Strategy
- Priority axes
- Implementing provisions
- Financial Provisions

Moreover, the procedure for adoption of Operational Programmes is outlined in Section 2.6.

Text boxes are used when Fund-specific criteria are to be applied and to highlight the main legal provisions relevant to each part. References to other provisions can be found in the body of the text. All quoted articles refer to the *Council Regulation (EC) N°1083/2006 laying down general provisions on the ERDF, the ESF and the Cohesion Fund and repealing Regulation (EC) N° 1260/1999*, unless stated otherwise.

### 2.1. Analysis

#### Article 37(1) of General Regulation

*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 sector in terms of strengths and weaknesses and the strategy chosen in response;*

- The analytical part should refer to the **eligible geographical area** chosen for the programme (NUTS I, NUTS II or other geographical level) in

accordance with Article 35. The eligible area could be presented through **map(s)** (which can be freely downloaded from the [REGIO GIS website](#)<sup>14</sup>). In case of thematic Programmes, the analysis should refer to the sector(s) concerned.

- Under the reinforced strategic approach the analysis should take into account the priorities of the EU as a whole, with special regard to the Lisbon objectives and Gothenburg priorities, and provide a sound analysis of the particular issues in the national/regional/territorial/sectoral context. To do so, the analysis must take into account the National Reform Programmes developed to respond to the Integrated Employment and Economic guidelines under the Lisbon process and the Community Strategic Guidelines for Cohesion.
- The analysis should reveal driving forces and development tendencies, including the sectoral, territorial and regional dimension of socio-economic development. The identification of strengths, weaknesses, opportunities and threats in the form of a SWOT analysis is a useful tool to identify the strategic choices made for the region(s), sector(s), urban or rural areas concerned.
- In regional programmes or national programmes with a regional dimension an analysis of **regional and/or local** disparities must be made. It must be noted that in case of regional programmes the analysis provided in the OP will constitute the main source of information (whilst in the case of thematic programmes the analysis of the situation is also provided in other strategic documents i.e. the NSRF and Lisbon Programmes). The specific features of the regions concerned and the specific territorial needs may be articulated around the relevant strategic priorities, namely
  - improving the *attractiveness of Member States, regions and cities* by improving accessibility, ensuring adequate quality and level of services, and preserving their environmental potential;
  - encouraging *innovation, entrepreneurship* and the growth of the *knowledge economy* by research and innovation capacities, including new information and communication technologies. This can be made through a description of the eligible area in terms of competitiveness, RTD and innovation, with reference to the innovation scoreboards<sup>15</sup>, and a special reference to small and medium-sized enterprises, as well as relevant regional, national and Community policies, RTD and innovation, information society, and others;

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<sup>14</sup> Should the map not be available in the catalogue, desk officers should request by e-mail to [REGIO SIG](#).

<sup>15</sup> <http://trendchart.cordis.lu/scoreboards/scoreboard2002/index.cfm>

- ***creating more and better jobs*** by exploiting and strengthening the potential of regional and local labour markets, attracting more people into employment, ensuring inclusive labour markets by including disadvantaged people, in particular those furthest away from the labour markets, improving adaptability of workers and enterprises and the flexibility of the labour markets; increasing investment in human capital through better education and skills; improving administrative capacity of regional and local authorities and helping maintain a healthy labour force;
  - encouraging a sound ***spatial planning strategy*** promoting a ***polycentric approach***, and improving the ***links between rural and urban areas***. This strategy should aim to strengthen the role of metropolitan areas as poles of excellence, controlling at the same time their expansion (urban sprawl) and to make small and medium towns more attractive, reinforcing their economic base. The transport network should be planned in a coherent way to achieve the desired urban structure;
  - improving the ***governance of interventions***. This means engaging all relevant stakeholders, promoting an increased role of local authorities, achieving the right coordination between territorial and thematic priorities and encouraging good planning and management practices
- Pour les programmes opérationnels fournissant une aide pour les régions ultrapériphériques, l'analyse devrait comprendre la description succincte des handicaps subis et reconnus notamment à l'article 299 § 2 du traité CE - éloignement, insularité, faible superficie, relief et climat difficiles et dépendance économique vis-à-vis d'un petit nombre de produits-, et leurs effets sur le développement économique et social des territoires concernés.
  - Without challenging the need of a thorough and detailed analysis, and taking into account that the analysis may substantially vary in size and depth depending on the dimension of the programme, this chapter should concentrate on the main outcomes of the analysis, and consequently cover a limited number of pages. Accordingly, the analytical chapter might make cross- references to all relevant documents presenting detailed analyses (also to avoid duplications and overlapping).

The analysis should make use of indicators on general and regional statistics collected by [EUROSTAT](#) - and in particular those included in its [REGIO database](#) - as well as in other sources of statistical data<sup>16</sup>. The relevant data and indicators referred to in the Lisbon Reform Programmes drawn up by Member States in the framework of the European Employment Strategy (EES) and the National Action Plan for Inclusion ("Laeken indicators") should also be used when examining employment and social inclusion aspects. For the territorial priorities indicators at the appropriate territorial level should be used (Urban Audit).

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<sup>16</sup> See for instance : [http://www.eurogeographics.org/eng/00\\_home.asp](http://www.eurogeographics.org/eng/00_home.asp) ;

- The analysis must also take into account the main lessons learned from the previous programming period or from similar experiences in other Regions or Member States, based on any results available (evaluation studies, audits reports, academic research etc.), as well as the findings of the ex-ante evaluation. These should allow for the identification of the main achievements, best practices and successful interventions which should be taken on board in the new programming period. This is particularly important for the mainstreaming of the Community Initiatives (URBAN, EQUAL).
- Furthermore, the analysis should describe, where appropriate
  - the environmental situation reflecting the results of the Strategic Environmental Assessment<sup>17</sup> relevant for the eligible area;
  - the situation in terms of equality between men and women and of disadvantaged groups with regard to labour market opportunities, including constraints on specific groups and the situation in terms of equality of ethnic minorities with regard to labour market opportunities;
  - the situation relating to non-discrimination with special regard to accessibility for disabled people.

#### **Specific requirements for ESF-financed programmes:**

The analysis should;

- respond to **EU recommendations** (Art. 4 of ESF Regulation). When recommendations are not addressed in the strategy, this should be justified by the analysis.
- describe the main needs relating to capacity building and joint actions of **social partners**, in case of the Convergence Objective (Art. 5(3) of ESF Regulation).

## **2.2. Strategy**

### Article 37(1) of General Regulation

*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 sector in terms of strengths and weaknesses and the **strategy** chosen in response*
- b) a justification of the **priorities** chosen having regard to the Community Strategic Guidelines on cohesion, the national strategic reference framework, as well as the results from the ex ante evaluation referred to in Article 48;*
- d) for information purposes, an indicative **breakdown by category** of the programmed use of the contribution from the Funds to the operational programme in accordance*

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<sup>17</sup> Letter by G. Meadows and M.P. Carl of 2 February 2006 on the requirements of and relationship between the SEA (Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment) and ex-ante evaluation of programmes for the period 2007-13.

- The OP strategy should be built on the analysis and present a coherent and effective response to the identified obstacles and weaknesses in order to underpin the achievement of the EU priorities. The logic of the strategic approach to cohesion must be underlined. The strategic EU objectives are identified in the Community strategic guidelines (CSG). Member States should set out national objectives in line with the CSG, in the National Strategic Reference Framework (NSRF), along with a strategy to achieve these objectives (see Chapter 1, section 2.3). The next step is the further operationalisation of the strategy set out in the NSRF through the operational programme. Thus, the strategy of the OP should be seen as an integral part of the whole strategic approach (CSG-NRP-NSRF-OP). The Operational Programme, thus should be consistent with the NSRF and the National Reform Programme drawn up by the Member State.
- The OP strategy must include the following elements :
  - **overall strategic objective(s) of the Operational Programme.** The OP's strategic objective must be consistent with the priorities identified at the Community Strategic Guidelines (CSG), the National Strategic Reference Framework (NSRF) and with the National Reform Programmes developed under the Lisbon process as a response to the Integrated Employment and Economic Guidelines. These objectives should be quantified at OP level, where appropriate.
  - Justification, relevance and consistency of the objectives of the OP on the basis of the **specific territorial needs** identified in the analysis
  - If an OP is affected by one of the **specific allocations** defined in Annex II of the General Regulation the text of the OP should mention the area in which the allocation will be granted and, where specific aims have been attached to the grant of a specific allocation in Annex II, the intended use of this allocation which must be in conformity with its objectives (art. 18(3)).
  - in line with the strategic objective(s) of the programme, definition of **specific objectives** which the programme aims to achieve. It is recommended that each Programme's specific objectives should correspond to an **OP priority axis**. In any case, the link between the programme's specific objectives and the priority axes should be clearly established. The achievement of specific objectives should be measured by **output and result and impact indicators** as appropriate<sup>18</sup>, when they lend themselves to quantification. The indicators must be achievable by the interventions carried out under the respective priority axis. The Lisbon indicators may be



used for this purpose. It is recommended to make use of the core indicators presented by the Commission (see Commission's Working Paper n° 2 in Annex 2 ).

- **identification of priority axes and their justification.** The choice of priority axes should be justified in light of the CSG and NSRF thematic or territorial priorities (Article 37(1)b) and the objectives of the Programme. The financial allocation in terms of thematic and geographic priority axis should be justified by the strategy.
- an **indicative breakdown by categories** at programme level of the programmed use of the funds, including the Lisbon earmarking targets, in accordance with Article 9(3) and Annex IIa of Commission implementing Regulation and Annex IV of the General Regulation. The Regulation sets the **earmarking** targets at 60% of expenditure for the Convergence Objective and 75% of expenditure for the Regional competitiveness and Employment Objective, applied as an average over the entire programming period of all Member States of the Union as constituted before 1 May 2004. The financial allocation to categories contributing to the Lisbon targets should be in line with the information provided in the NSRFs as regards the contribution of OPs to the earmarking exercise. It should be also noted that information on the progress in achievement of earmarking targets must be provided in the annual implementation reports on the operational programmes (see annex XVIII of the Commission Implementing Regulation and chapter 8, section 3.5) which in turn can serve as a source of information for the strategic reporting (see chapter 2). The presentation of the earmarking targets will be facilitated by the computer system for data exchange, through which the indicative breakdown by categories must be transmitted to the Commission.
- a summary description of the main findings of the **ex-ante evaluation** (Article 48) on the planned impacts of the OP strategic and specific objectives and priorities, including for impacts that may be difficult to quantify. For reasons of transparency, it is recommended that, within the text of the OP, the **ex-ante evaluation** is reflected in the form of a short recapitulation<sup>19</sup>. Information on where the full report is available must be provided (art.47(3)). It is recommended that the ex-ante evaluation report be submitted with the OP to the Commission<sup>20</sup>.

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<sup>19</sup> The following information should be taken into account on the added value of the ex-ante evaluation : what were the main evaluation questions ? what were the main recommendations and findings of the evaluation ? which recommendations were taken into account (justifying those that were not) ? where can the full text of the evaluation be found ?

<sup>20</sup> In line with art. 48 of the general regulation, for the Member States eligible under the Convergence objective, ex-ante evaluation is compulsory for each OP. In duly justified cases agreed between the

For detailed recommendations concerning the content of the report and the submission please see the Commission's Working Paper n° 1 on ex-ante evaluation (Annex 1).

- a summary description of the **partnership process** through which the Programme's strategy and main priorities were identified<sup>21</sup>.
- description of how the promotion and mainstreaming of **gender equality and equal opportunities** will be ensured including non-discrimination with special regard to accessibility for people with disabilities and to the full economic and social participation of ethnic minorities. (Art.16 of the General Regulation and Art. 6 of ESF Regulation)
- description of how the programme will address the issue of **sustainable development** and goal of improving the environment as set out in art. 6 of the Treaty (Art.17)
- where a Strategic Environmental assessment (SEA) has been undertaken, a description of how the **SEA results**, including results of public consultation, have been taken into account in the OP strategy. Where the SEA directive<sup>22</sup> has not yet been transposed into national law, the OP should demonstrate that its requirements have been met.

Where relevant the strategy may also provide the basis for ensuring consistency with other policies (Community, national, sectoral and regional) and other operational programmes (particularly if these issues have not been adequately addressed in the NSRF).

#### **Specific requirements for ESF-financed programmes :**

- The strategy should describe how **EU recommendations** are addressed [Art.4(1) of ESF Regulation].
- Under the Convergence Objective the strategy must provide a basis for interventions for **social partners** (Art 5(3) of the ESF Reg.), namely (i) activities strengthening the institutional capacity of social partners and (ii) activities jointly undertaken by social

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Commission and the Member State, Member State may carry out an ex-ante evaluation of more than one OP. For the Regional Competitiveness and Employment Objective, Member States must carry out an ex-ante evaluation covering all the OPs, or an evaluation for each Fund, or an evaluation for each priority or for each OP. For the Territorial Co-operation objective, an ex-ante evaluation must be jointly carried out either for each OP or for several OPs.

<sup>21</sup> The following information should be included about the programme design as an interactive process : who was designated to draft the programme ? who carried out the ex-ante evaluation ? how was the consultation organised between the responsible authority and the socio-economic partners or any other interested parties ? what were the main conclusions of the consultation process ?

<sup>22</sup> Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. OJ L 197/2001

partners, in particular as regards adaptability of workers and enterprises referred to in Art. 3(1)(a) of the ESF Reg.

- Strategy for the promotion and **mainstreaming of innovative actions, the promotion of trans-national and inter-regional cooperation and partnership**. (Art. 3(5) and 3(6) of ESF Regulation)

It should be also noted that for Convergence regions and/or Cohesion countries the interventions relating to strengthening the institutional capacity of public administration and public services should form a specific OP or at least a priority within an OP (please see also chapter 1, section 2.3.2)

### **Specific requirements regarding programmes providing assistance to outermost regions:**

La stratégie doit intégrer les éléments complémentaires suivants:

La description des objectifs poursuivis au titre d'un axe prioritaire spécifique dédié à la compensation des surcoûts et la contribution des mesures de compensation aux objectifs y afférents: comment les dépenses de fonctionnement et d'investissement consacrées à la compensation des surcoûts contribuent aux objectifs du P.O?

La description des champs d'intervention des dépenses d'investissement et des dépenses de fonctionnement envisagées ventilées entre le secteur public et le secteur privé. En quoi les dépenses d'investissement contribuent-elles à réduire éventuellement les dépenses de fonctionnement? Quelles sont les dépenses de fonctionnement qui restent "incompressibles"?

L'indication de la coordination entre les dépenses d'investissement à financer au titre de cet axe prioritaire et celles financées au titre des autres axes du P.O: quelle démarcation entre ces deux catégories de dépenses? (cette remarque vise à limiter des risques de financement d'un seul projet d'investissement au titre de deux axes).

## **2.3. Programme's Priority axes**

### **Article 37(1) General Regulation**

*Operational programmes relating to the “Convergence” and the “Regional competitiveness and employment” objectives shall contain*

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

Ideally, one thematic priority axis should correspond to maximum one priority as identified by the corresponding Fund-specific Regulation. In other words, it is not recommended that the priorities identified in the ERDF or ESF Regulations should be merged when translated into OP priority axes. On the other hand, for specialised OPs, a particular ESF or ERDF Regulation priority can be translated into more than one OP priority axis. Territorial priorities for sustainable urban development should be included, when appropriate.

- The description of a priority axis no longer contains information about “measures” in the meaning of the 2000-06 programming period. Nevertheless, the information contained in the priority axes should provide clear indications of the main areas of interventions and activities as well as a description of the objectives. Thus, the description of the priorities should include in particular:
  - **main objectives** of the priority axis
  - **quantified targets and indicators.** All priority axes should set quantified targets where they lend themselves to quantification. It is recommended to select only a limited set of indicators for each priority axis that will measure the achievement of the set objectives. The choice of appropriate indicators is indispensable for the functioning of reporting mechanisms and to allow the Monitoring Committee to fulfil its tasks. Output and result indicators may be used. Given the more strategic and results-oriented approach of the 2007-13 Regulations, it is preferable to use result indicators. The indicators must make it possible to measure the progress as compared to the initial situation and also to measure the effectiveness of the chosen interventions to reach the objectives. Indicators need to be sensitive, i.e. that the programme is capable of bringing about a change in the indicator value. In this context, indicators should be presented with a clear definition, a baseline, a quantified target and an explanation of the respective measurement method, and source of information. There should be an estimate of the proportion of the activities concerned that are covered by the indicators chosen. For more methodological details see the Commission’s Working Paper n° 2 on Indicators for Monitoring and Evaluation (Annex 2).
  - Expected impact of the interventions for meeting the specific territorial needs
  - identification of the main **target groups/sectors/areas/specific territories**, and/or **beneficiaries** (Annex II of Commission Implementing Regulation);
  - **sufficient information on a list of indicative type of operations**, underpinning the indicative breakdown by the categories provided at the level of the strategy. This is an important element to allow the Monitoring Committee (Art. 63)

and other reporting mechanisms (Annual Implementation Reports-art. 67, etc.) to operate efficiently.

- avail of the **flexibility facility** (Art 34(2)). The flexibility can be used only for those actions falling within the scope of the other Fund, which are necessary for the implementation of the operation of the main Fund and are directly linked to it. Thus, it is not possible to finance an entire priority axis of one Fund - as described in the specific Fund Regulations - through the flexibility facility. The flexibility must be seen exclusively as a facilitation mechanism limited in its scope. The flexibility is limited to 10 % for each priority axis. For urban development and social inclusion this flexibility can be increased to 15% (Art. 8 of the ERDF Regulation and Art. 3(7) of the ESF Regulation respectively). It is not necessary to programme and quantify in exact terms the desired degree of flexibility in the Operational Programme. However, if a Member State decides to apply this flexibility, it should indicate as far as possible which axes will be concerned (see chapter 7 for more details).
  - information on criteria of **demarcation** with similar activities financed by the *EAFRD*<sup>23</sup> and by the *EFF* (Art. 37(1)(f)), in line with the main guiding principles included in the NSRF about this demarcation, as well as, having regard to the amount of EIB/EIF contribution indicated in the financial plan, measures taken to ensure **coordination** with these Funds and the interventions of the EIB and EIF (Art. 36) and other existing financial instruments (Art. 9(4)), where appropriate (particularly if these issues have not been adequately addressed in the NSRF).
  - where appropriate, Member States should also indicate their intentions with regard to the use of JEREMIE and JESSICA initiatives. Where the Member States opt to implement the two initiatives in co-operation with the EIB and the EIF, they should indicate so in the programmes so that the necessary involvement of the EIB and the EIF can be organised.
- It is recommended that the technical assistance actions should be presented as a separate priority axis. This would further facilitate the verification of the financial limits (4 % maximum of total allocation, or 6% in the case of European territorial cooperation Objective, measured per Objective and Member State) set for preparatory, management, monitoring, evaluation, information and control activities and activities to reinforce the administrative capacity for implementing the Funds (Art. 46). These activities can be co-financed by both the Structural Funds and the Cohesion Fund.

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<sup>23</sup> See Council Regulation (EC) n° 1698/2005 on EAFRD

- When it is anticipated that global grants are to be used, the description of the priority should refer to the use of this instrument. See for details chapter 5.
- In the case of multi-objective programmes, a separate priority axis must be established per objective (i.e. a priority axis cannot cover both "Convergence" and "Regional competitiveness" regions). (Art 54(3)). The co-financing rate in such cases should be provided at the level of both the programme and priority axis. The financial allocation between objectives should be defined on a pro-rata basis, relying on realistic and justifiable criteria, taking into account the objective and nature of activities concerned. For more information on financial management please see chapter 6.

#### **Specific issues for ERDF -funded OPs:**

- the Cohesion Fund and the ERDF must intervene jointly in national multi-Fund programmes with respect to transport and environment with the Cohesion Fund intervening throughout the country and the ERDF interventions being limited to the Convergence objective regions (art. 34(3)). In such cases, Operational programmes shall contain specific priority axes for each Fund (Art. 37(2) and 34(3)), while ERDF priority axes will have to distinguish, where necessary, the assistance to Convergence regions.

- Operational programmes providing assistance in *outermost regions* must contain specific priority axes for the activities financed by their additional allocation (Art. 37(4)(b) and Art.(19)(d)). L'axe prioritaire devrait comprendre des principales actions envisagées en matière de surcoûts envisagés par l'autorité de gestion du P.O démontrant la proportionnalité des aides versées au regard du (ou des) handicap(s) subis, l'information sur les complémentarités avec des actions similaires financées par le FEAGA, par les programmes portant mesures spécifiques dans le domaine de l'agriculture en faveur des régions ultrapériphériques de l'Union (dits programmes "POSEI")<sup>24</sup>, l'information sur les complémentarités avec les actions financées au titre du FSE en ce qui concerne les actions de manque de capital humain sur le marché local.

- Except for certain cases (such as rural regions), it is recommended to include a specific priority axis for *sustainable urban development* (art. 37(4)(a)) based on sound analysis of needs and opportunities in urban areas, which may focus on thematic or territorial priorities, or both. It is also recommended that the relevant priority axis include the list of cities chosen (or at least the criteria to be used in order to select the cities) and the procedures for sub-delegation to urban authorities (Art. 37(6)(a)) where appropriate, allowing for sufficient flexibility with regard to national political and administrative structure of each MS and taking into account the nature and scope of the actions, areas of intervention and budget allocated.

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<sup>24</sup> JO L 41 du 14.2.2006 , JO L 145 du 31.5.2006

This priority may contain:

- *Integrated development operation of specific urban areas.* It might be either deprived urban areas, or areas with potential as a pole of development in the urban context.

- *Selected thematic interventions* related to specific urban issues, as promoting clean and sustainable transport in urban areas, enhancement of the natural and cultural heritage and assets of the cities, stimulating energy efficiency and efficient energy management systems in the urban context, urban environmental management.

- For the Member States who entered the EU as of 1 May 2004 onwards, *housing* investments can be eligible under certain conditions. If the MS wish to include housing investments in a programme, this expenditure shall be programmed within the framework of an integrated urban development operation or priority axis for areas experiencing or threatened by physical deterioration and social exclusion.. Expenditure is limited to multi-family housing or buildings owned by public authorities or non-profit operators for use as housing designated for low-income households or people with special needs. Eligible operations include actions for energy efficiency, within the framework of an integrated urban development plan and up to a limit of 3 % of the total allocation to the OP concerned, or 2% of the total ERDF allocation to the Member State (Article 7(2)(b) of ERDF Regulation). The areas selected for housing operations shall comply with at least three of the criteria stated in art. 47(1) of the Commission Implementing Regulation, two of which selected among those listed under (a) to (h).

- Annex 6 provides more details regarding mainstreaming of urban actions.

- Where appropriate, activities related to *inter-regional cooperation* with at least one region or local authority of another Member State (art. 37(6)(b)) may be mentioned in this section. See section at the end of this chapter for details.

Where appropriate, this section should contain the indicative list of *major projects* due to be submitted (Art.37(1)(h)). See chapter 4 for more details.

- It should be noted that the list of aid-schemes under Article 87 of the EC Treaty is no longer required to be contained in the OP.

- While there is no regulatory obligation to include provision for *experimentation* in the OPs they are recommended as a useful tool to generate new ideas and approaches – supported by examples from recent experience. Member States can decide what elements of the recommendations below they wish to include in their OPs, based on their needs and experiences:

- section indicating that the OP foresees a specific instrument (“laboratory”) for experimentation (e. g. global grant, group of projects etc.);

- a financial allocation to this instrument;

- management by a dedicated team. There should be strong links (and defined arrangements) between this team and the Monitoring Committee of the OP to ensure the integration on a more extensive basis of the good practices;

- implementation different from the rest of the OP (e.g. shorter period for implementation, specific calls for proposals, analysis of results, etc.). The objectives of this instrument should be described.

A further guidance document for Member States and regions on developing regional strategies for innovation and experimentation will be available in June 2006

### **Specific issues for ESF-funded OPs:**

#### **Innovation**

- The themes identified for innovation should be briefly described, where appropriate (Article 7 of ESF Regulation)

#### **Interregional and trans-national cooperation [art. 3(5) and 3(6) of the ESF Regulation]**

- The description of the priorities should include information on coherence and complementarity of the ESF actions with actions supported through other Community trans-national programmes, in particular in the field of education and training. This section should provide information as to how experiences, information, results and good practices will be shared and how the complementary approaches and coordinated or joint actions will be developed

- If the Member States wish to use the possibility offered by Art. 8 of ESF Regulation (increase by 10 per cent of ESF co-financing) for interregional and transnational cooperation, these actions shall take the form of a specific priority axis within an operational programme (or a specific operational programme).

## **2.4. Implementing provisions**

In accordance with the applicable option (Art. 59 or Art. 74), the provisions for implementing each OP must include a description :

- the **managing authority, certifying authority, audit authority (and other bodies carrying out audit work under the responsibility of the audit authority)** and **intermediate bodies** designated by the Member State for the OP (Art. 37(1)(g) and Art. 59). This should include the name of the authorities and bodies and/or any other specific information necessary to identify them in a non ambiguous manner, a brief description of their role and responsibilities in the management and the control of the OP and how they exercise them. When Article 74 applies, and the Member State does not designate the certifying authority and the audit authority under Article 59(1) points (b) and (c), the same information on the national bodies/services which carry out the tasks and responsibilities of the certifying authority and the audit authority, should be provided. How the principle of separation of functions between and within the authorities and bodies is to be respected should be explained (Art. 58). Annex 8 of the Aide-



Mémoire provides further details as regards management and control systems.

- the public or private **body designated to give an opinion on the compliance of the systems descriptions** when this is not done by the Audit Authority (Art. 71(3)).
  - the **body responsible for receiving payments from the Commission** [art. 37 (1)(g)iii and art. 76(2)]
  - the body or bodies responsible for making payments to the beneficiaries [ art. 37 (1)(g)iii and art. 80]
- Each OP document must include a description of:
    - the **monitoring and evaluation system** (Art. 37(1)(g)ii): the OP document should describe the indicators system established and define how it will be used. This could include responsibility for the collection of data and its initial analysis (this is normally done by the Managing authority), regular presentation of data to the Monitoring committee, use in annual reports, use for evaluations.
    - procedures for ensuring **monitoring** of the **specific allocations** referred to Annex II of the General Regulation, where applicable.
    - the arrangements [to be] agreed between the Commission and the Member State for the **computerised exchange of data** needed to fulfil the management, monitoring and evaluation requirements (Art. 37(1)(g)vi) and concerning the direct use of SFC 2007 or the use of an interface with their local IT system. The exchange of computerised information is required under the General Regulation (art. 66). Art. 40 of the Commission implementing Regulation provides a detailed list of information that must be provided in the computer system. The description should include information on the procedures being implemented to provide assurance on the reliability of the accounting, monitoring and financial reporting systems in computerised form (article 57.d), including the way according to which they will ensure the security and the reliability of the electronic data exchanges [article 37(1)g)vi]. The OP should also include information on internal circuit between the "central trusted third party" for confirmation and update of SFC 2007 access rights requests and each individual requesting an up-to-date access to SFC 2007 and the scope of verifications made by the central body on which the Commission will rely for giving access rights and their update (suppression, modification of the profile).
    - Optional and only for the Convergence Objective, a summary of the **evaluation plan** which shall present the indicative evaluation activities the Member State intends to carry out (unless otherwise agreed by the Commission and the Member States) relevant to the Operational programme (Art. 48). This could cover the following

items: themes or parts of the programmes to be evaluated; indicative timetable; financial resources planned; specification of the management structure responsible for evaluation; a mechanism for a possible revision of the evaluation plan. For detailed recommendations see the Commission's working paper n° 5 on on-going evaluations (Annex 5).

- the **procedures for the mobilisation and circulation of funding ensuring that financial flows** are transparent (Art. 37(1)(g)iv): this relates to the description of the organisation of two types of financial flows: a) the contribution of the various partners to the financing of the OP (and its priorities) and its organisation; b) the main stages of Community funding between the body responsible for making the payments to the beneficiaries and the beneficiaries. The procedure for dealing with interest generated (art. 78(7) and 83) should also be included.
- the elements aiming at ensuring the **publicity and the information** of the operational programme (Art. 37(1)(g)v and Art. 69, and Chapter II of Commission implementing Regulation). The communication plans (developing those elements mentioned in the OP) shall be sent for the examination within 4 months after the adoption of the OP. See Annex 7 with more detailed guidance on the information and communication.
- the procedures for ensuring that the **partnership principle** is applied at all levels of implementation (art. 11), including in the composition of the Monitoring Committee, and description on how partnership will be ensured especially in the development and implementation of the projects<sup>25</sup>.
- The procedures ensuring the integration of gender perspective and principle of non-discrimination are taken into account during various stages of implementation with special regard to the accessibility of disabled persons. (Art. 16)

Furthermore the implementing provisions should include where appropriate a brief description of arrangements being made to identify when (and how much) the flexibility facility is used.<sup>26</sup>

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<sup>25</sup> On the question of relevant partners and most appropriate modalities for their inclusion, please refer to the chapter 1, section 2.1.

<sup>26</sup> The use of the flexibility facility should be monitored within the programming period to ensure that the ceiling for such activities is not exceeded. Such information should be included in Annual Implementation Reports (see chapter 8, section 3.5)

### **Specific issues for ESF-funded OPs:**

For Convergence objective, the implementing provisions should also contain practical provisions and mechanisms required to implement the activities of **social partners** (art. 5(3)).

### **Specific requirements regarding programmes providing assistance to outermost regions:**

The implementing provisions should include (art. 11 of the ERDF Regulation):

Descriptif résumé sur la méthodologie de quantification des surcoûts, notamment dans le cas des aides au fonctionnement et du financement de contrats et obligations de services publics.

Descriptif résumé du contrôle du cumul des aides, par rapport au contrôle de la proportionnalité et afin d'éviter le risque de double financement des interventions.

Descriptif résumé de la gestion des compensations financières liées à des contrats et/ou obligations de services publics dans le secteur du transport.

Descriptif résumé de la gestion des contrats et/ou obligations de services publics dans les secteurs autres que le transport (délégations de services publics assorties de compensations financières) dans le cas où de telles actions sont envisagées.

Descriptif résumé de la gestion des aides au démarrage de services de transport dans le cas où de telles actions sont envisagées.

## **2.5. Financial Provisions**

Art. 37(1)(e) of the general Regulation, annex XVI of Commission implementing Regulation and Chapter 6 set out the elements required for the financial management for the Operational Programmes. For each OP this should be in conformity with the financial perspectives and arrangements for regions receiving transitional support. The totals of all Operational Programmes per objective or year should be consistent with those of the same priority or year of the corresponding NSRF.

The Member States should justify the modulation of the co-financing rates at priority axis level in the light, in particular, of criteria defined in art.52 of the general Regulation. On request of the Member State, the Commission will calculate the contribution from the Funds in reference to either total expenditure or public expenditure at the level of the priority axis, as long as the ceiling rate is respected at programme level. If this flexibility is not chosen, the basis for the co-financing rate at programme level should be mentioned in each priority axis.

It is recommended that at priority axis level information on expected use of state aid is provided.

If national contingency reserve (art. 51) and national performance reserve (art. 50) are used, both the Member States and the Commission should be aware of additional burden related to their management. See details in chapter 6.

## 2.6. Procedure for adoption of Operational Programmes

### Article 32 of General Regulation

3. *The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 76 as soon as possible, but no later than five months following the adoption of the Community Strategic Guidelines on cohesion, as referred to in Article 26.*
4. *The Commission shall appraise the proposed operational programme to determine whether it contributes to the goals and priorities of the national strategic reference framework and the Community Strategic Guidelines on cohesion. Where the Commission, within two months following the receipt of the operational programme, considers that an operational programme does not contribute to the achievement of the objectives of the national strategic reference framework and the Community Strategic Guidelines on cohesion, it may invite the Member State to provide all necessary additional information and, where appropriate, to revise the proposed programme accordingly.*
5. *The Commission shall adopt each operational programme as soon as possible, but no later than four months following its formal submission by the Member State, and not before the 1st of January 2007.*

The definition of the content of the OP and the procedure for the approval of the OP are provided by Articles 32 and 37 of the Council regulation (EC) n° 1083/2006.

Formally, the Member State can submit OPs after the entry into force of the Regulations, thus before the adoption of the Community Strategic Guidelines (CSG) and the submission of the National Strategic Reference Framework, but no later than 5 months from the adoption of the Community Strategic Guidelines<sup>27</sup>. The attention of the Member States should be drawn to this deadline, where necessary. The Commission decision on the OP will in any case only be taken after the formal submission of the NSRF.

### 2.6.1. Admissibility check

Article 37 sets out the content of the OP for the “Convergence” and the “Regional Competitiveness and employment” Objectives. An OP will be admissible if it contains all the elements required under the regulatory provisions (see checklist at the end of this chapter).

The starting date of eligibility of expenditure is the date of formal submission of an admissible OP (the submission can take place only after adoption of the general Regulation) or 1 January 2007,

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<sup>27</sup> Where an OP is submitted before the adoption of the CSG or before submission of the NSRF, the procedural treatment will be decided by each DG.

whichever is earliest (Art. 56 (1)) 28. The date of eligibility will be entered in SFC 2007.

If an OP does not contain the required elements mentioned in Article 37, it is not admissible. The information transmitted to Member States must mention the exact reason which justifies its non admissibility and stipulate the consequences of non admissibility i.e. that the eligibility cannot start. After submission of the new version of the OP the procedure starts from the beginning. The final information on admissibility including the starting date of eligibility is sent by the authorising officer to the Member State (through SFC 2007).

The formal indication to Member State on whether an OP is admissible or not must be sent within 10 calendar days<sup>29</sup> via SFC 2007.

#### 2.6.2. *Quality check*

The Operational Programme must be formally adopted by the Commission within 4 months following its formal submission (Article 32(5)). The starting date for the calculation of the deadlines for the approval of the OP is the date of receipt of an admissible OP or, if the OP was received before the adoption of the Community Strategic Guideline, four months from the date of the adoption of the Community Strategic Guidelines. The quality check is based on the contribution of the OP in respect of the achievement of the strategy laid down by the NSRF (Article 32(4)) and the quality of the elements detailed in Article 37. The Commission services will have **two months** from the date of the receipt of the OP for the quality check and for asking further information or requesting a revised version of the OP (art. 32(4)).

Accordingly, the desk officer has to proceed with the inter-service consultation within the two months.

As regards the management and control systems, the quality check should ensure that the structures and bodies are compliant and that major weaknesses identified for the 2000-2006 period are satisfactory addressed.

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<sup>28</sup> This is particularly relevant for cases when the Member State submits the OP before 1 January 2007. For ROM and BUL, this date cannot be before 1 January 2007

<sup>29</sup> For further internal procedures to be followed within DG REGIO, refer to note Adonis n° 230659 of 31 July 2006.

It should be noted that the request from the Commission will delay the time limit for the approval of the OP in the same proportion of the time taken by the Member State for providing a satisfactory answer.

The work begun in anticipation of the adoption of the regulations should ensure that the Operational Programmes are adopted speedily.

### 3. KEY DIFFERENCES COMPARED WITH THE 2000-06 PROGRAMMING PERIOD

The increased focus on **strategic approach to programming** constitutes the key change as compared to the current programming period. In this context, future operational programmes should seek to establish a clear and coherent policy response which on the one hand underpins the achievement of EU objectives - as identified in the Community Strategic Guidelines for Cohesion and translated by the National Strategic Reference Frameworks - and on the other hand tackles the particular challenges and needs of a concerned sector or region. The operational programmes must be also consistent with the National Reform Programmes developed under the Lisbon process.

In this context, Operational Programmes will be more strategic documents than in the previous programming period. The OP will no longer contain the description of measures, the main focus must be placed on the description of the strategy and priorities, including the coherence of the development objectives and priorities and related indicators and targets the identification of indicators to measure the progress at strategic level. This should be reflected also in the structure and the volume of specific sections. The analytical part therefore should ideally not take more than 10 pages. The implementing provisions should *grosso modo* be of the same volume as under the current programming period. The financial tables will be substantially simplified and limited to the priority level.

It must be emphasised that the **key principles** of EU cohesion policy – programming, partnership, co-financing and evaluation – will continue to apply in the programming period 2007-2013.

**Admissibility check: checklist for OP (for Objectives "Convergence" and "Regional Competitiveness and Employment")**

- Consistency of the structured elements of the OP encoded in SFC-2007 with the figures in the OP presented**
- Analysis of socio-economic situation**, strengths, weaknesses and potentials
- Description of strategy\***and justification of priorities chosen
- Description of priority axes**, including main objectives using quantified targets and indicators
- Table with indicative breakdown by category of the programmed use of the Funds** (see Annex II Part B of the Commission Implementing Regulation)
- Financing plans consistent with Financial perspective and with the NSRF:**
  - Table providing the annual commitment of each Fund in the OP (see table 1 in Annex XVI of the Commission Impl. Reg.)
  - Table providing, for the whole programming period, the amount of allocation of each Fund, the national contribution (public, private where appropriate), the rate of Community assistance. Contribution from the EIB and other funding for information (see table 2 in Annex VI of the Commission Impl. Reg.)
- Where relevant, information on **complementarity with other measures financed by EAFRD and EFF**
- Implementing provisions:**
  - **Designation of authorities** (stipulated in art. 58, or in art.73 if applicable: managing authority, certifying authority, audit authority, intermediate bodies); body designated to give an opinion on the compliance of the system description when not done by audit authority (ar.70(3)); body responsible for receiving payments from the Commission; body responsible for making payments to the beneficiaries;
  - Description of **evaluation and monitoring systems**
  - Description of procedures ensuring application of the **partnership principle** at all levels of OP implementation
  - Description of **procedures for mobilisation and circulation of funding** ensuring that financial flows are transparent



- Description of **information and publicity measures**
- Description of **arrangements for computerised exchange of data**
- Procedures foreseen **to allocate and ensure monitoring of specific allocations**
- **Indicative list of major projects**
- **For OPs co-financed by the ERDF:**
  - Where appropriate, information on the **approach to the sustainable urban development**
  - **For OPs providing assistance to outermost regions: specific priority axis** for assistance to outermost regions

*\* For the "Regional Competitiveness and Employment Objective", OP must include justification for the thematic, geographical and financial concentration on priorities as laid down in art. 5 of the ERDF Reg. and in art. 4 of the ESF Reg.*

#### **4. INTERREGIONAL CO-OPERATION UNDER ERDF CONVERGENCE AND COMPETITIVENESS PROGRAMMES**

Article 37(6) (b) of the General Regulation states that at the initiative of the Member State, the above Programmes may contain "actions for interregional co-operation with, at least, one region or local authority off another Member State in each regional programme".

The implementation arrangements for this option are the responsibility of the Member State, but the Commission has formulated the following recommendations, based on previous experience with interregional co-operation actions, which may prove helpful.

- (1) If the interregional option is used, it may be more straightforward to implement if it is done through a specific priority. This would also give it a certain visibility. The topics covered by interregional co-operation should relate to the topics of the programmes concerned.
- (2) An interregional project is essentially a group of partners from different parts of Europe coming together to work together on issues of common interest, each funding a specific part of the overall project. For an interregional project under the Territorial Co-operation objective, the partners will choose a lead partner who will sign the contract on behalf of all partners with the managing authority. Under the Convergence and Competitiveness interregional option, each partner will have his own contract with his own managing authority.

This offers significant co-ordination challenges across the partnership, and the Commission therefore recommends that partnerships should not be too large. While partnerships of up to 10 are common under interregional co-operation under INTERREG III, the Commission recommends partnerships of 2-4 partners, as the Commission considers that it would be difficult to co-ordinate interregional partnerships with more than 4 partners under Convergence and Competitiveness programmes.

- (3) This allows interregional co-operation under Convergence and Competitiveness programmes to contribute to the good quality of these programmes by building direct links and exchanging experiences between 2 or 3 regions (perhaps between an EU15 and an EU12 region) facing similar challenges while being complementary to interregional co-operation under Territorial Co-operation.
- (4) At programme level, the content could already identify specific regions that the region concerned wishes to co-operate with. In this case, close co-ordination with the partner regions would be required during programme preparation to ensure that (a) they also include an interregional priority and (b) they put a similar type of content in their programmes. This would also offer the opportunity to use a type of "regional framework operation" approach which has proved popular during the implementation of INTERREG IIIC.

Alternatively, if the specific partner regions have not yet been identified, the programme could address the main themes to be dealt with via interregional co-operation and the types of activities to be supported.

Evidently, regions could also decide to describe a mixture of these two approaches, by identifying a key partner or partners, while also leaving open the option to work with other regions.

- (5) At project level, interregional projects are normally based on exchanges of experience and best practice activities. They deal with learning from other partners in order to create new ideas and new possibilities within the region. Actions which could be envisaged include networking, conferences, exchanges of personnel, development of case studies and best practice manuals, and the dissemination of expertise from one partner to another.
- (6) Programme authorities should consider how best to organise project application forms for interregional projects. Even if each partner's application is a self-contained project within his own regional programme, he should provide information about his partners, their planned activities, as well as their timetable for approval and implementation.
- (7) Finally, the Commission notes the practical challenge of each partner in an interregional partnership trying to get his particular part of the project approved. Programme authorities will need to be aware of the approval procedures of other relevant programmes and should try to avoid creating a situation where one partner's application is approved but another's is not.

# CHAPTER 4: MAJOR PROJECT

## 1. SUMMARY OF THE MAIN ELEMENTS

This chapter outlines the provisions of the regulatory package for the programming period 2007-2013 in relation to the treatment of major ERDF and CF projects presented under the programmes<sup>30</sup>.

The following issues are treated:

- Guidelines for the desk officers
  - List of major projects in the Operational Programmes
  - Definition (ref. Article 39)
    - Major project definition
    - Major project phasing
  - Material to be provided
  - JASPERS
  - Appraisal and decision by the Commission
    - Projects submitted under Regulation (EC) 1164/1994
    - Admissibility
    - Scope of appraisal
    - Use of outside experts
    - Content of the Commission decision
    - Modification of the Commission decision
  - Eligibility period and declaration of expenditure
  - Treatment of major projects under the n+2/n+3 rule
  
- The key differences compared to the 2000-06 programme period

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<sup>30</sup> The regulation implicitly excludes a requirement for major ESF projects, should they arise, to be notified to the Commission.

## 2. GUIDELINES FOR THE DESK OFFICERS

### 2.1. List of major projects in the Operational Programmes

#### Article 37(1)(h) of General Regulation

*1. h) an indicative list of major projects within the meaning of Article 39, which are expected to be submitted within the programming period for Commission approval*

The indicative list of major projects in an Operational Programmes shall be provided indicating the fund whose participation will be requested (ERDF or Cohesion Fund).

The indicative list of major projects does not represent a formal pre-selection and cannot prejudice the application of the programme selection criteria (specified in the OP or other relevant documents) or the Commission's own evaluation. The inclusion of the list in the OP does not oblige the subsequent positive Commission decision on the Major Project. Likewise the list does not preclude that alternative or additional major projects may be subsequently assisted.

Any changes in the indicative list of major projects likely to be presented under the programme shall not require a formal modification of the programme but should be indicated in the relevant section of the Annual Implementation Report.

### 2.2. Definition (Ref. Article 39)

#### 2.2.1. Major project definition

#### Article 39 of General Regulation

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

As part of an operational programme the ERDF and Cohesion Fund may finance expenditure in respect of major projects, through out the programming period. That expenditure may be declared once the project has been approved by a Commission Decision under the conditions mentioned in Point 3.6.

Article 39 provides the definition and thresholds for identifying major projects. In order to determine whether a project or project phase should be notified the total cost shall be taken into account (this contrasts with the threshold of 50 m€ of eligible costs set in the period 2000-2006). In deciding whether a project exceeds the threshold for notification to the Commission the total cost should be

assessed based on the total project related cost, i.e. the (estimated) value of the contracts, cost of land purchase, and other expenditures, including provisions for inflation and risk where appropriate (see also the guidance on CBA methodology). This total cost shall correspond to the total cost taken into account in the calculation of the grant in the application form (Section H).

Under Article 39 environment projects are subject to the lower threshold of total costs exceeding 25 m€. In the context of the **Cohesion Fund** where certain types of transport and energy projects, which clearly present environmental benefits, have been brought under the environmental scope of the CF regulation (Reg (EC) 1084/2006) it would appear that the 25 m€ threshold applies. **(This interpretation shall be confirmed later in 2006 following an ISC).**

For those countries not in the euro zone the estimated total cost shall be converted into euro and the calculation should be documented in the files of the management body. Consistency in the use of exchange rates for this purpose should be assured by the Member State/Managing Authority (based on a reasonable, verifiable, reference exchange rate, for instance, the average exchange rate during the last 12 months).

#### 2.2.2. *Major project phasing*

Where the implementation period for the operation concerned is expected to be longer than the programming period, the project shall be divided into phases (Article 40(d)). For clarity and in order to avoid project splitting for projects co-financed during the 2007-2013 programming period, the relevant total cost is a function of the nature and structure of the project or project phase as follows:

- Where the project phase considered for financing (2007-2013), encompasses only preparation (i.e. studies, planning and design, procurement preparation) then only the estimated total cost of the preparatory phase shall be taken into account in determining whether it exceeds the threshold.

i.e. This allows MAs to assist project preparation under their own authority where there was no decision on the future financing of construction in the 2007-2013 period.

- Where the project phases to be financed (2007-2013) are the preparatory phase and also a construction phase(s) that would be operational in its own right then the total cost to be taken into account should be the estimated aggregate cost of the relevant preparatory and construction phase(s).

i.e. MAs would be required to notify projects exceeding the relevant threshold based on the aggregate total costs of

preparatory and operational construction phases to be completed within 2007-13.

- Where the project phase(s) to be financed (2007-2013) involve(s) a construction phase not operational in its own right then the total cost to be taken into account should be the estimated aggregate cost of the relevant preparatory and construction phases required to render the project operational, whether or not co-financed in the 2007-2013 period.
- i.e. MAs would be required to notify projects exceeding the relevant threshold based on the aggregate total costs of preparatory and all construction phases required to render the project operational, including phases beyond the 2007-13 period.

“Operational” in the context of project phasing implies that the infrastructure is functionally complete and is being exploited, even if the full design capacity of the facility cannot be exploited because of limitations linked to incomplete subsequent phases.

### **2.3. Material to be provided**

#### Article 9 of General Regulation

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

#### *Article 40 of General Regulation*

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

- a) information on the body to be responsible for implementation;*
- b) information on the nature of the investment and a description of it, its financial volume and location;*
- c) the results of the feasibility studies;*
- d) a timetable for implementing the project and, where the implementation period for the operation concerned is expected to be longer than the programming period, the phases for which Community co-financing is requested during the 2007-2013 programming period;*
- e) a cost-benefit analysis, including a risk assessment and the foreseeable impact on the sector concerned and on the socio-economic situation of the Member State and/or the region and, when possible and where appropriate, of other regions of the Community;*
- f) an analysis of the environmental impact;*
- g) a justification for the public contribution;*

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

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

#### Article 55 of General Regulation – Revenue generating projects

*(These provisions are not specific to major projects but apply to all co-financed infrastructure)*

Before the final decision to grant Structural or Cohesion Funds assistance to a major project (and before the related expenditure may be declared) the Member State or the managing authority shall provide the information specified in Article 40.

In the light of the requirements for the electronic exchange of information (SFC-2007) the form of the presentation of the required information is established in Annexes XX, XXI and XXII of Commission Implementing Regulation EC [XXXX]/2006. The formal notification of a major project is achieved through the presentation of the following material:

- Uploading a complete standard application form; i.e. either an infrastructure or productive investment form (Annex XXI or XXII) **and**
- Encoding in the application "SFC-2007" the selected structured data from the application form identified in Annex XX to be encoded according to the nature of the project.

By way of clarifying specific requirements of Article 40 of the regulation, set out above, it should be pointed out that the major project applications form require, inter alia,

- (e) a cost benefit analysis, including detailed indications of the alternatives considered, information of the financial profitability and sustainability of the project, the demand analysis, as well as a risk assessment and information on the economic viability, including the foreseeable impact on the development or conversion of the region concerned. The calculation of the grant being sought for each major project shall be subject to Article 41.2 and the rules applied to revenue generating projects under Article 55, where relevant<sup>31</sup>, as well as in the light of the indicative guidance on the methodology to be used in carrying out the cost benefit analysis foreseen in Article 40 (e) above (in Annex to this Aide Memoire).

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<sup>31</sup> The scope of application of Article 55 is described in the CBA working document (§ 3.2)



- (f) An analysis of the environmental impact, including in particular the effect on sensitive zones forming part of the Natural 2000 network and protected under the “Habitats” directive 92/43/EEC and the “Birds” directive 79/409/EEC), the polluter pays principle and compliance with the EIA directive.
- (g) A justification for the public contribution, including:
- Financial analysis establishing the financing gap, where relevant;
  - Information on compliance with rules on state aids;
  - An indication of the influence of the contribution of the Funds on whether the projects will be implemented.

## 2.4. JASPERS

*No relevant legislative text.*

JASPERS is a technical assistance partnership between DG REGIO, the EIB and the EBRD. Its objective is to prepare high-quality projects which are eligible for support from the Structural and Cohesion Funds, have a multiplier effect through the spread of best practice and provide models which the beneficiary countries can replicate themselves. The organisation of JASPERS is described in the text box below.

In principle, EU Member States covered by the Convergence Objective are eligible to receive assistance from JASPERS but priority will be given to the ten Member states that joined the Union in 2004 and to Bulgaria and Romania. JASPERS focuses on larger projects with total costs exceeding €25 million for environmental projects and €50 million for transport or other projects. However, there will be flexibility about these thresholds in the case of the smaller countries or where projects serve as pilot actions for best practice.

JASPERS is aimed at providing assistance as required from the early stages of project conception up to the finalisation of the major project form to be provided to the Commission by the national authorities (depending on the size of the project). This assistance may cover any type of preparatory work required to deliver a fully developed project and thereby reduce the time needed to reach a decision about assistance. It is geared to providing advice, ensuring coordination, developing and reviewing project structures, removing bottlenecks, filling gaps and identifying problems not addressed, e.g. state aid, environmental impact assessment, etc. However, much of the detailed technical work remains the responsibility of the respective Beneficiary States. Assistance from JASPERS is provided free of charge to the beneficiaries.

JASPERS operates on the basis of action plans drawn up annually for each country in cooperation with the Beneficiary State concerned and with the geographical desks in DG REGIO. Towards the end of each year JASPERS

will ask the priority countries to supply a draft action plan for the following year. These will be reviewed by the JASPERS team with the assistance of the DG REGIO country desks and meetings will take place with the national authorities as required. Following this process, a proposed action plan will be sent to each country for agreement. DG REGIO will be consulted at all stages when the action plans are being drawn up but will not formally approve the plans.

JASPERS assistance may be provided to beneficiaries or other entities involved in project preparation, but shall always be provided in the context of a request from the national authorities in the framework of the Country Action Plan.

JASPERS does not change existing legal responsibilities: where a project has received assistance from JASPERS, the responsibility for any request for EU assistance remains with the beneficiary country and the decision to provide an EU grant for a project remains the responsibility of the European Commission.

The Commission will be informed of any JASPERS activities in relation to a project submitted for assistance from the ERDF or the Cohesion Funds, in one of two ways;

- The major project application forms ask the notifying authority to inform the Commission whether the JASPERS technical assistance facility has contributed to the national preparation of the project. If so, the national authorities are invited to outline the principal conclusions and recommendations of the JASPERS contribution and how have they been taken into account in the finalisation of the project (Section I.4 of the forms).
- Any report or other material provided to a national authority under the Action Plan must also be made available to the Commission.

The contact point for cooperation with JASPERS is in REGIO Directorate B.

### **Institutional organisation of JASPERS**

JASPERS is implemented by staff from the EIB and the EBRD based in the European Investment Bank in Luxembourg and in regional offices in Central and Eastern Europe. The project preparation activities of the JASPERS unit are clearly separated from the lending activities of the EIB and the EBRD. Most of the staff of JASPERS will be newly recruited in 2006.

The intended contributions of the parties to JASPERS are as follows:

- (1) a cash contribution by the Commission from the DG REGIO technical assistance budget (not countries' own TA allocations) intended to cover:
  - (i) the full cost of thirty person years of professional staff annually and ten person years of support staff annually, including their overhead costs, such as offices, equipment and working facilities, and travel and subsistence costs;
  - (ii) the costs of external consultants to support JASPERS activities;

- (iii) the costs of travel, subsistence and, where necessary, relocation of staff incurred by the EIB, and by the EBRD as a partner implementing JASPERS.
- (2) a contribution by the EIB, in the form of personnel equivalent to sixteen years of professional staff time annually, together with their related overheads.
- (3) a contribution by the EBRD, in the form of (i) personnel equivalent to a maximum of eight years of professional staff time annually, together with their related overheads; and (ii) occasional use of EBRD Resident Office facilities.

The three partners in JASPERS have set out their intentions in a Memorandum of Understanding signed by all three on 30 May 2006. The arrangements for transferring EU funding to the EIB (as the manager of JASPERS) are described in annual bilateral grant agreements between DG REGIO and the EIB. The Grant agreement sets out the detailed provisions for the implementation of JASPERS.

JASPERS is managed by a steering committee with two members each from DG REGIO, the EIB and the EBRD that will meet regularly and ensure strategic guidance for the instrument.

## **2.5. Appraisal and decision by the Commission**

### Article 41 of General Regulation

1. *The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 40, its consistency with the priorities of the operational programme, its contribution to achieving the goals of those priorities and its 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 40. That decision shall define the physical object, the amount to which the co-financing rate for the priority axis applies, and the annual plan of financial contribution from the ERDF or the Cohesion Fund.*
3. *Where the Commission refuses to make a financial contribution 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.*

### Cohesion Fund Regulation (EC) 1084/2006

#### Article 5

2. *Applications for major projects, within the meaning of Articles 39, 40 and 41 of Regulation (EC) 1083/2006, made to the Commission under Regulation (EC) No 1164/94 shall remain valid provided that such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and the above mentioned Articles of Regulation (EC) 1083/2006, within not more than two months as of 1 January 2007.*

#### *2.5.1. Projects submitted under Regulation (EC) 1164/1994*

Applications for projects received under Regulation (EC) 1164/1994 shall remain valid provided that the initial application form submitted is supplemented not later than 28 February 2007. In supplementing

the initial applications the relevant managing authority should ensure, in particular, that the following elements are provided:

- The structured data elements of the major project application 2007-2013 (Annex XX of the Implementing regulation) are encoded by the national authorities in SFC 2007<sup>32</sup>;
- The original application shall be supplemented to correctly reflect the grant calculation method relevant for the relevant 2007-2013 OP finally presented for adoption (in any event a complete Section H of the major project form 2007-2013 should be provided);
- Other questions, not addressed in the old CF application 2000-2006 should be answered.

#### 2.5.2. *Admissibility*

The deadline of 3 months for a Commission decision (Article 41.2) is expressed in stricter language than in Reg (EC) 1260/1999. Where the elements set out in Article 40 are not all present the Commission shall inform the Member State, and the application shall be deemed not admissible. The deadline of Article 41.2 shall start from the date of receipt of a complete application.

DG REGIO's workflow system shall be adapted to allow the management and monitoring of the treatment of major project applications. The duration of the internal decision-making procedure shall be calculated after deduction of the time taken by the Member State to respond.

#### 2.5.3. *Scope of appraisal*

The Commission's appraisal of the major project shall be based on the material provided in the application form and in the light of the CBA guidelines (economic and financial analysis and grant calculation methodology).

The main elements to be examined during the geographic desks appraisal of a major project proposal are as follows:

- The coherence of the project with the objectives of the priorities of the operational programme (Article 41.1);

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<sup>32</sup> Article 42.3 of the Commission Implementing Regulation clarifies the responsibilities of the national authorities in case the information systems are not available to electronically submit official documents. In cases of non-availability of SFC-2007 the national authorities may submit the documentation in hard copy. However once the SFC-2007 system becomes available they shall submit the electronic version and encode the relevant structure data.

- The contribution of the project to the achievement of the goals of the priorities (Article 41.1), including quantified indicators;
- The coherence of the project with other Community policies (Article 41.1);
- The coherence of the CBA analysis presented with the Commission CBA methodology and, where available, the relevant national CBA guidance;
- The plausibility of the socio-economic and financial analyses and the business plan in the case of productive investment.

The Commission's appraisal of a major project does not extend to the verification of compliance with all legal obligations under EU (or national) law. Ensuring legal compliance of all projects resides with the national authorities. In particular, a positive decision by the Commission on the major project under the General Regulation does not alter the obligations on the national authorities to ensure full compliance with state aid rules, procurement rules or other conditions for co-financing.

In the case of environmental obligations Article 40 requires the national authorities to provide an analysis of the environment impact.

#### 2.5.4. *Use of outside experts*

Article 41.1 provides that the Commission may involve outside experts including the EIB in its appraisal of project applications. Where a project raises issues that cannot be resolved without expert or technical advice the geographic desk shall have available two potential sources of external expertise:

- A direct Technical Assistance multiple framework contract (MFC) shall be in place in early 2007 to allow the speedy mobilisation of a wide range of different experts directly by the DG REGIO geographic desks. The procedure for mobilising this contract shall be set down once the contract is signed. (REGIO B1)
- JASPERS shall be available for the use of the Member States (see above). During the process of preparing the annual JASPERS' action plans the REGIO geographic desks can propose the inclusion of certain projects. However requests by the geographic desks to JASPERS to initiate an evaluation of a Major project outside of the action plan process is not formally foreseen. The completed major project form should explain the input of JASPERS to the national preparation and appraisal of the project.

The EIB framework contract used in the Period 2000-2006 will lapse on 31/12/2006. In view of establishment of the JASPERS Unit under the responsibility of the EIB, the renewal of the EIB framework

agreements is not being proposed. Nonetheless where the EIB is known to be involved in project financing DG REGIO desks should consult the EIB on the proposed project as part of the normal inter service consultation.

#### 2.5.5. *Content of the Commission decision*

The Commission Decision is required to define

- The physical object: this shall entail a short description of the essential physical objective(s);
- The amount of eligible expenditure to which the co-financing rate of the priority applies: following the appropriate appraisal of the financing gap in the case of revenue generating operations<sup>33</sup>;
- The annual plan of financial contribution from the ERDF or the Cohesion Fund, i.e. the share of the annual programme commitments concerned by the major project.

The format of the model decision shall be established. The formal decision adoption procedure shall be defined in the Commission's Empowerment decision governing the decision making procedures required under the General Regulation.

In case the Commission refuses to confirm any participation from the Funds to a major project, it shall notify the Member State of its reasons within the period of 3 months (Article 41.2). That notification shall take the form of a Commission Decision and the adoption procedure shall be established in the Commission's Empowerment decision governing the Commission decisions to be taken under the General regulation.

#### 2.5.6. *Modification of the Commission decision*

In legal terms the Commission's major project decision is closely linked to the contents of the application form presented. Any eventual verification of the respect of the Commission decision is conducted in the light of the project described in the application form endorsed by the national authorities, even if the detailed contents of the application are not described in the decision. In practice there have been relatively few requests in the period 2000-2006 to modify the major project approval decisions even though the decision fixes

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<sup>33</sup> The method of expenditure reimbursement foreseen in Article 77 involves the application of the co-financing rate (ratio) laid down in the OPs for each priority axis to the declared expenditure. There is no prohibition on an individual operation in the priority having a higher co-financing rate provided that other operations in the priority have lower rates and the maximum priority rate (ratio) is respected. **However, Article 41.2 excludes the possibility of varying from the Priority axes co-financing rate for major projects.**

the grant rate and the absolute amount of the maximum grant. Where a major project has been approved by the Commission the national authorities are responsible for the respect of all the normal conditions of co-financing and the conformity of the final project with the application and approval decision.

*[While DG REGIO introduced a “one modification rule” under the Cohesion Fund in 2002 the modification of Commission major project decisions (ERDF) in the Period 2000-2006 has not be the subject of particular restrictions. In view of the more detailed content of the future major project decisions the DG may decide on modification guidelines at a future date.]*

## **2.6. Eligibility period and declaration of expenditure**

### Article 56 of General Regulation

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

### Article 78 of General Regulation

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

The expenditure incurred on major projects shall be eligible from the starting date of eligibility of the programme. However, the declaration of related expenditure may not be made until the adoption of a Commission Decision on the major project.

## **2.7. Treatment of major projects under the n+2/n+3 rule**

The treatment of major projects and any delays in the approval of such projects may give rise to derogation under the n+2 / n+3 rule, as was the case during the period 2000-2006. The related procedure is detailed in Chapter 6 - Financial Management.

### **3. THE KEY DIFFERENCES COMPARED TO THE 2000-06 PROGRAMME PERIOD**

- Cohesion Fund and ERDF major projects are now treated according to the same programming rules.
- An indicative list of projects by fund is to be provided in the Operational programme.
- The definition of a project is unchanged. However the thresholds of 25 m€ (environment projects) and 50 m€ are calculated based on total cost rather than on eligible cost (i.e. the total costs used to calculate the EU co-financing rate) as in the Period 2000-2006.
- The Commission major project decisions shall in future include an annual plan of EU assistance, a summary description of the physical object being financed and the confirmation of the basis for application of the co financing rate of the priority axis (i.e. no longer the co financing rate of the major project).
- The application of the financing gap methodology is generalised in the 2007-2013 period (Article 55). (The maximum thresholds of 40%/25% co-financing, in the case of projects generating significant net revenue (25% or more) set in Reg 1260/1999, are removed.)
- The expenditure on major projects shall be eligible from the date of eligibility of the programme. It is also now explicitly stated that the declaration of expenditure may not be made until the adoption of a Commission Decision confirming the grant rate, as was the case during the Period 2000-2006.



# CHAPTER 5: GLOBAL GRANT

## 1. INTRODUCTION AND SUMMARY OF MAIN ELEMENTS

- La référence aux subventions globales apparaît dans le chapitre II "programming content". La section III est dédiée aux Global Grants articles 42, 43 (autres sections: Operational Programmes, Major projects, Financial Engineering, Technical assistance)
- La subvention globale apparaît maintenant comme un outil de gestion, parmi la gamme d'outils disponible pour mettre en œuvre un programme. La subvention globale ne devrait donc pas être choisie pour elle-même, mais en tant que meilleure solution de gestion pour mettre en œuvre une partie d'un programme opérationnel.
- L'expérience montre qu'il n'y a pas de modalités uniques pour le choix de l'organisme intermédiaire. Dans tous les cas, le desk géographique devra veiller à rappeler aux autorités de gestion la nécessité :
  - de la transparence de la procédure de choix d'un organisme intermédiaire,
  - du respect des règles de marchés publics, en cas de rémunération de l'organisme intermédiaire.
  - d'identifier l'éventuel financement d'une rémunération de l'organisme intermédiaire, sous forme d'un projet clairement séparé de la subvention globale elle-même, pour les raisons suivantes :
    - ✓ Les coûts liés à la gestion de la subvention globale par l'organisme intermédiaire sont éligibles à l'assistance technique et devraient donc être comptabilisés dans la vérification du plafond des dépenses d'assistance technique.
    - ✓ La répercussion des coûts de gestion de la subvention globale sur les bénéficiaires est interdite.
- Les subventions globales étant mises en œuvre par des organismes intermédiaires, elles sont donc soumises au formalisme qui s'applique à ces organismes au titre des Programmes Opérationnels, du descriptif des systèmes de gestion et de contrôle, du rapport annuel de contrôle.

## 2. GUIDELINES FOR DESK OFFICERS

### 2.1. Qu'est ce qu'une subvention globale ?

#### Article 42(1) General Regulation:

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

- Une partie d'un programme opérationnel dont la mise en œuvre et la gestion ont été confiées, par l'Etat Membre ou l'Autorité de Gestion, à un ou plusieurs organismes intermédiaires (les Organismes Intermédiaires définis dans l'article 2) désignés par l'Etat Membre ou l'Autorité de Gestion.
- Un outil de gestion, parmi la gamme d'outils disponible pour mettre en œuvre un programme. La subvention globale ne devrait donc pas être choisie pour elle-même, mais en tant que meilleure solution de gestion pour mettre en œuvre une partie d'un programme opérationnel.

### 2.2. Pourquoi mettre en place une subvention globale ?

- L'expérience montre deux principaux cas où la subvention globale a été utilisée avec succès par les Etats Membres :
  - Délégation d'une partie de la mise en œuvre du programme: les subventions globales ont permis dans certains Etats Membres de confier la gestion d'une partie du programme à des organismes compétents (techniquement, juridiquement) sur un thème ou un territoire donné.
  - Outil de développement local permettant de "toucher" des destinataires ignorés par les autres dispositifs : Les subventions globales, en particulier dans le cadre de l'article 4.2 du règlement FSE 2000 2006, ont constitué un outil fort de développement local et d'efficacité de gestion, grâce à la redistribution de "petites" subventions à une multitude de destinataires, par le biais de structures le plus souvent implantées localement.
- Les évaluations insistent sur l'équilibre à trouver entre deux aspects souvent difficiles à concilier :
  - capacité administrative et assise financière (d'autant plus importante que la recherche de cofinancement a souvent posé problème et que la possibilité de financer à 100% sur les fonds n'est plus explicite, même si elle n'est pas interdite)
  - la compétence dans le domaine concerné par la subvention globale, l'implantation et l'excellente connaissance des destinataires visés, souvent totalement exclus des autres dispositifs cofinancés par les Fonds Structurels.

- Il n'y a toutefois aucune obligation de mettre en place une subvention globale dans une situation donnée, puisqu'il s'agit d'un outil de gestion parmi d'autres outils de gestion.

### 2.3. A qui est confiée une subvention globale ?

#### Article 42(1) of General Regulation:

*...entrust ... to one or more intermediate bodies ...including local authorities, regional development bodies or non-governmental organisations...*

#### Article 2(6) of General Regulation:

*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 operations.*

- La subvention globale est confiée à un organisme intermédiaire (défini dans l'article 2 §6 du règlement général).
- L'organisme intermédiaire auquel la gestion d'une subvention globale est confiée peut être un organisme tel que local authorities, regional development bodies or non-governmental organisations. Il peut être de nature publique ou privée.
- Toute subvention globale est gérée par un organisme intermédiaire, mais tout organisme intermédiaire ne gère pas forcément une subvention globale (Il est par exemple prévu la création d'organismes intermédiaires pour accomplir certaines des tâches d'une autorité de gestion ou de certification, dont l'objet ne sera pas la gestion d'une subvention globale).

### 2.4. Par qui est confiée une subvention globale ?

#### Article 42(1) of General Regulation:

*...designated by the Member State or the managing authority...*

La subvention globale est confiée à l'organisme intermédiaire par l'Etat Membre ou l'autorité de gestion.

### 2.5. Par quelle procédure les organismes intermédiaires sont-ils choisis ?

Dans le règlement général, il n'y a pas de procédure pré-définie. En effet, un examen au cas par cas est nécessaire car la procédure à suivre diffère (a) selon que l'organisme intermédiaire est ou non rémunéré et (b) selon la nature juridique et les fonctions de cet organisme.

L'organisme intermédiaire va effectivement rendre un "service" à l'autorité de gestion en prenant en charge une partie de la gestion du programme.

**Conclusion :**

Quelques grands principes sont recommandés pour le choix des organismes intermédiaires. Le desk géographique devrait veiller à ce que les autorités de gestion soient conscientes de la nécessité :

- de la transparence de la procédure de choix d'un organisme intermédiaire,
- du respect des règles de marchés publics, en cas de rémunération de l'organisme intermédiaire.
- d'identifier l'éventuelle rémunération de l'organisme intermédiaire. Cette rémunération devra faire l'objet d'un projet clairement séparé de la subvention globale elle-même, financé par l'assistance technique (cf 2.6.2).

## **2.6. Quelle affectation pour les coûts de gestion de la subvention globale ?**

*2.6.1. La répercussion des coûts de gestion de la subvention globale sur les bénéficiaires est interdite*

### Article 80 of General Regulation: Wholeness of payment to beneficiaries

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

Sur la base de l'article 80, il est interdit que l'organisme intermédiaire soit rémunéré par prélèvement d'une partie des montants alloués aux bénéficiaires, ou par toute autre forme de paiement liée à la prestation effectuée qui aurait pour effet de réduire les montants alloués aux bénéficiaires.

*2.6.2. Financement par l'assistance technique*

### Article 46(1) of General Regulation

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

*a) 4% of the total amount allocated under the “Convergence” and the “Regional competitiveness and employment” objectives;*

*b) 6% of the total amount allocated under the “European territorial cooperation” objective.*

Pour la nouvelle période de programmation, l'assistance technique couvre les "preparatory, management, monitoring, evaluation, information and control activities of operationnal programmes" donc une partie des activités réalisées par les organismes intermédiaires chargés de gérer les subventions globales. L'expérience de la période actuelle démontre également que ces activités doivent être financées

dans le cadre de l'assistance technique et soumises au plafond de 4%/6%.

La création d'un axe prioritaire ou d'un programme spécifique devrait être très vivement conseillée afin de faciliter le suivi de ce taux, même si la nouvelle structure des programmes n'impose pas d'axe Assistance Technique (et les mesures n'existent pas). Si, malgré tout, un tel axe n'existe pas, comme pour la flexibilité entre Fonds, les frais de gestion imputables au fonctionnement d'un organisme intermédiaire gérant une subvention globale doivent être clairement identifiés afin d'assurer le respect des plafonds de l'Assistance technique.

Conclusion :

Le financement au titre du programme d'un organisme intermédiaire pour gérer une subvention globale constitue une dépense d'assistance technique. A ce titre cette dépense doit être financée au titre d'un axe/programme assistance technique ou, à défaut d'un tel axe ou programme, individuellement comptabilisée au titre de l'assistance technique afin de garantir le bon respect des plafonds.

## **2.7. Quels sont les critères de choix d'un organisme intermédiaire ?**

### Article 42(2) of General Regulation

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

Intermediate Body must fulfil 4 criteria (and provide guarantees):

- Solvency
- Competence in the domain concerned
- Competence 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.

## **2.8. Quel est le rôle de l'organisme intermédiaire gestionnaire de la subvention globale ?**

### Article 42(1) of General Regulation

*...management and implementation of a part of an operational programme...*

L'organisme intermédiaire doit assurer la mise en œuvre d'une partie d'un programme opérationnel.

## 2.9. Responsabilité de la subvention globale

### Article 42(1) of General Regulation

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

### Article 59(2) of General Regulation

*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.*

- Vis-à-vis de la Commission, l'autorité de gestion et l'Etat Membre restent responsables de la gestion des Fonds.

## 2.10. Quel formalisme pour une subvention globale ?

### 2.10.1. Entre Autorité de gestion et Organisme Intermédiaire

### Article 42(1) of General Regulation

*...in accordance with the provisions of an agreement concluded between the Member State or the managing authority and that body....*

### Article (12 )of Commission Implementing Regulation

*Where one or more of the tasks of a managing authority ... are performed by an intermediate body, the relevant arrangements shall be formally recorded in writing. The provisions of this Regulation concerning the managing authority and certifying authority shall apply to that intermediate body.*

- Recorded in writing (article 12 IR) agreement concluded between the managing authority and the intermediary body (art 42 1 GR).
- A noter que les dispositions concernant l'autorité de gestion s'appliquent aux organismes intermédiaires (art 12 IR), ce qui devrait être traduit dans l'accord conclu entre l'autorité de gestion et l'organisme intermédiaire, comme le prévoit le point d) de l'article 43 ci-dessous.

### Article 43 of General Regulation

*The agreement ... 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 59(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.*

## 2.10.2. *Entre Commission et Etat membre*

Entre Commission et Etat Membre, trois niveaux de formalisme de la subvention globale sont à considérer : (1) au sein du programme opérationnel, (2) dans la description des systèmes de gestion et de contrôle, (3) dans la procédure annuelle de reporting (exécution, contrôle).

### 2.10.2.1. Dans le programme opérationnel

#### Article 37(1)(g)(i) of General Regulation

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

*(g) the implementing provisions for the operational programme, including:*

*(i) designation by the Member State of all the entities referred to in Article 59...*

- Dans ses dispositions d'exécution, le programme opérationnel doit indiquer les autorités désignées par l'Etat Membre à l'article 59 (art 37 (1)(g)(i)) ce qui couvre les éventuels organismes intermédiaires désignés par l'Etat membre pour gérer une subvention globale.
- Ce formalisme ne s'applique qu'aux organismes intermédiaires désignés par l'Etat Membre. Subsiste ainsi la nécessaire souplesse aux organismes intermédiaires désignés par l'autorité de gestion (généralement de petites subventions globales), en particulier suite à des procédures de marché dès lors qu'il n'est pas possible de connaître l'organisme lors de la soumission du programme opérationnel. Dès que les procédures de désignation de ces organismes sont achevées, ils doivent être mentionnés dans la description des systèmes de gestion et de contrôle ou dans les rapports annuels.
- Une bonne pratique pourrait être d'inclure dans les programmes opérationnels, à titre indicatif, la liste des subventions globales prévues ou bien les thèmes ou parties du programme susceptibles de faire l'objet d'une subvention globale.

## 2.10.2.2. Dans la description des systèmes de gestion et de contrôle

### Article 71(1) of General Regulation

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

- a) *the managing and certifying authorities and intermediate bodies,*
- Avant la première demande de paiements ou au plus tard 12 mois après l'approbation de chaque programme opérationnel, l'Etat Membre devra soumettre à la Commission la description de ses systèmes de gestion et de contrôle accompagnée d'un rapport qui présente les résultats d'une évaluation de la mise en place des systèmes et contient un avis sur leur conformité avec les dispositions des article 58 à 62 GR. La description de ces systèmes devra couvrir l'organisation et les procédures des autorités en charge des programmes, y compris celles des organismes intermédiaires (incluant donc ceux qui gèrent une subvention globale).

### Article 22 of Commission Implementing Regulation

*As regards the managing authority, the certifying authority and each intermediate body the Member State shall provide to the Commission the following information:*

- (a) *the description of the tasks entrusted to them;*  
(b) *the organisation chart of the body, the allocation of tasks between or within their departments, and the indicative number of posts allocated;*  
(c) *the procedures for selecting and approving operations;*  
(d) *the procedures by which beneficiaries' applications for reimbursement are received, verified and validated, and in particular the rules and procedures laid down for verification purposes in Article 13, and the procedures by which payments to beneficiaries are authorised, executed and entered in the accounts;*  
(e) *the procedures by which statements of expenditure are drawn up, certified and submitted to the Commission;*  
(f) *reference to the written procedures established for the purposes of points (c), (d) and (e);*

...

### Annexe XII of Commission Implementing Regulation: Description of the management and control systems, point 3.: INTERMEDIATE BODIES

*NB: This section should be completed separately for each intermediate body. Indicate the authority which has delegated the function to the intermediate bodies*

#### *3.1 The intermediate body and its main functions*

##### *3.1.1 Specification of the main functions/tasks of the intermediate bodies*

#### *3.2 Organisation of each intermediate body*

##### *3.2.1. Organisation chart and specifications of the functions of the units (including indicative number of posts allocated)*



*3.2.2. Written procedures prepared for use by staff of the intermediate body (date and reference)*

*3.2.3. Description of procedures for selecting and approving operations (if not described under 2.2.3)*

*3.2.4. Verification of operations (Art.60 (b) of Council Regulation (EC) No 1083/2006) (if not described under 2.2.4)*

*3.2.5. Description of procedures for processing of applications for reimbursement (if not described under 2.2.5)*

- Les organismes intermédiaires doivent être nommément désignés dans la description du système de gestion et de contrôle.
- L'article 22 et l'annexe XII (du règlement d'application précisent les informations à fournir dans le cadre du rapport prévu à l'article 71 du règlement général : description des tâches confiées, répartition des tâches, des différentes procédures de gestion et de vérification, etc.

#### 2.10.2.3. Dans le rapport annuel de contrôle

##### Annex IV of Commission Implementing Regulation: 2. Changes in management and control system

➤ *Indicate any significant changes in the management and control systems as compared with the description provided under Article 71(1) of Council Regulation (EC) No 1083/2006 and notified to the Audit Authority, giving the dates from which the changes apply*

- Le rapport annuel de contrôle doit faire état des modifications des systèmes de gestion et de contrôle par rapport au descriptif initial de ces systèmes. A ce titre, toute nouvelle subvention globale, changement d'organisme intermédiaire ou autre changement significatif devrait être indiquée dans ce rapport sur la base des renseignements demandés au titre de l'article 22 du règlement d'application et de son annexe XII point 3 (voir 2.10.2.2.).

#### 2.10.2.4. Dans le rapport annuel d'exécution

- La mise en œuvre des opérations liées à une subvention globale doit être décrite dans le rapport annuel, au même titre que la mise en œuvre de toute opération.
- Il pourrait être recommandé aux Autorités de gestion que la mise en œuvre de certaines subventions globales fasse l'objet d'une partie spécifique dans le rapport annuel, même s'il ne s'agit pas d'une obligation réglementaire. Cela paraît particulièrement pertinent pour les subventions globales dont le thème est très ciblé

(développement local, problématiques urbaines par exemple).

### **3. KEY DIFFERENCES COMPARED WITH THE 2000-06 PROGRAMMING PERIOD**

- Par rapport à 2000 2006, il n'y a plus besoin d'accord de la Commission pour mettre en place la subvention globale (Initiatives Communautaires). Néanmoins, l'Etat Membre ou l'autorité de gestion doit décrire l'organisation et les procédures prévues pour les organismes intermédiaires gérant les subventions globales, au même titre que les autres organismes intermédiaires.
- La possibilité de subvention globale alimentée à 100% par les Fonds Structurels n'est plus explicite (alors que c'était explicitement prévu au titre article 4 2 du règlement FSE 2000 2006). Le taux plafond de cofinancement étant appliqué au niveau du programme, il sera cependant possible d'alimenter une subvention globale uniquement avec des Fonds Structurels, moyennant des précautions en termes de gestion pour s'assurer qu'à la clôture, le taux de cofinancement plafond applicable au niveau du programme opérationnel est bien respecté.
- La subvention globale est avant tout une modalité de gestion et "perd", d'un point de vue réglementaire, son aspect "soutien aux initiatives locales" et redistribution de "petites" subventions qui était présent dans la définition de la subvention globale et dans l'article 4.2 du règlement FSE 2000 2006.
- La seule allusion à des subventions globales spécifiques est faite dans l'article 36.7 a) du règlement général concernant la subdélégation aux autorités urbaines dans le cadre d'une subvention globale.

# **CHAPTER 6: FINANCIAL MANAGEMENT**

## **1. SUMMARY OF THE MAIN ELEMENTS**

This chapter summarises the provisions related to the financial management of programmes during the 2007-2013 period. Where necessary the text below clarifies for the desk officers the procedure for implementing the provisions of the relevant regulations.

## **2. GUIDELINES FOR THE DESK OFFICER**

### **2.1. General**

#### Article 76 (4) of the general Regulation

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

All information exchange, not only financial, between Member State and the Commission should be done via the computer application "SFC 2007". The minimum content of the financial information to be provided is mentioned in article 40 of the draft Commission Regulation.

### **2.2. Use of the EURO**

#### Article 81 of general Regulation

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

All financial amounts are to be expressed in euros (article 81). On 22/05/06 REGIO has sent a note to all non-euro countries detailing the rates to be used for payment operations (see note n°130151 in annex 9).

### **2.3. Financial plans and other details in the programming documents**

The formats of the tables to be provided with the various programming documents are set out in the (draft) Commission Implementing Regulation. A description of the particular formats follows.

#### *2.3.1. National Strategic Reference Framework*

#### Article 28 (3) of general Regulation

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

- (a) the list of operational programmes referred to in Article 27(4)(c);*
- (b) the indicative annual allocation from each Fund by programme referred to in Article 27(4)(e); and*

*(c) for the Convergence objective only, the level of expenditure guaranteeing compliance with the additionality principle referred to in Article 15 and the action envisaged for reinforcing administrative efficiency as referred to in Article 27(4)(f)(i)*

Two tables are required for the NSRF:

- Financial table for the NSRF - indicative annual allocation by Fund and programme
- Ex-ante verification of additionality for 2007-2013 Programmes

### 2.3.2. Operational programmes (article 37§e)

#### Article 37 (e) of general Regulation

*a financing plan containing two tables:*

*(i) a table breaking down for each year, in accordance with Articles 52, 53 and 54, the amount of the total financial appropriation envisaged for the contribution from each Fund. The financing plan shall show separately within the total annual contribution from the Structural Funds the appropriations provided for regions receiving transitional support. The total contribution from the Funds provided for annually shall be compatible with the applicable financial framework taking into account the phased reduction laid down in paragraph 6 of Annex II;*

*(ii) a table specifying, for the whole programming period, for the operational programme and for each priority axis, the amount of the total financial appropriation of the Community contribution and the national counterparts and the rate of contribution from the Funds. Where in accordance with Article 53, the national counterpart is made up of public and private expenditure, the table shall give the indicative breakdown between the public and the private components. Where in accordance with Article 53, the national counterpart is made up of public expenditure, the table shall indicate the amount of the national public contribution. It shall show, for information, the contribution from the EIB and the other existing financial instruments;*

- Financing plans for the operational programme:
  - Financing plan of the OP giving the annual commitment of each Fund in the operational programme
  - Financial plan of the operational programme giving, for the whole programming period, the amount of the allocation of each Fund in the operational programme, the national contribution and the rate of reimbursement by priority axis.

The first financial table in the programme comprises an annual breakdown of funding envisaged by fund. It is the plan which is used for Community commitments and therefore must be in line with the financial perspectives (that is the sum of each country's programmes per year is fixed). The table will show separately regions receiving transitional support.

The second table shows, for each priority, the national contributions and a co-financing percentage (rounded) per priority for the overall programme period. Unlike in the 2000-06 period the distribution of programme resources by priority shall not be ventilated annually. The ratio between Community and total eligible funding set in the active decision granting assistance will be used for the calculation of reimbursement at priority axis level.

The Member State can choose the co-financing rate (between 20% and 100%) for each priority axis as long as the ceiling rate is respected at programme level, and therefore two rates should be checked (at priority axis and at programme level). Although it is possible for a priority axis to be co-financed entirely with private funding, this is to be discouraged as (1) it goes against the principle of additionality and (2) private financing is hard to guarantee in advance and may lead to that priority axis not being completed. For outermost regions, the co-financing rate has a minimum of 50% (see article 11 of the Council ERDF regulation).

In the case of multi-objective programmes, a separate priority axis must be established per objective (i.e. a priority axis cannot cover both "Convergence" and "Regional Competitiveness and Employment" regions (art 54(3)). The co-financing rate in such cases should be provided at the level of both the programme and the priority axis.

In addition, before the decision can be taken, the body to whom payments shall be made and the account number must be sent to the Commission on the standard form, if it is not the same account as that used for 2000-2006 payments.

### 2.3.3. *Other tables*

#### Article 39 of general Regulation

##### *Content of major projects*

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

- Financing plans in a major project application:
  - Indicative annual plan of financial contribution from the funds in major projects / state aid schemes (updated)
  - Tables indicating the breakdown of total project costs

- Provisional forecasts of likely payment applications per fund and per programme, for the current and subsequent financial year

## 2.4. Commitments

### Article 75 of general Regulation

*The Community budget commitments in respect of operational programmes (hereinafter "budget commitments") shall be effected annually for each Fund and objective during the period between 1 January 2007 and 31 December 2013. The first budget commitment shall be made before the adoption by the Commission of the decision approving the operational programme. Each subsequent commitment shall be made, as a general rule, by 30 April each year by the Commission on the basis of the decision to grant a contribution from the Funds referred to in Article 32.*

The Commission makes commitments for each fund in accordance with the financial plan annexed to the Commission decision adopting the Operational Programme. The amount to commit is the amount in the financial plan in the decision for that fund and year.

The first commitment is made together with the decision, that is the commitment shall be made during the decision adoption process with both commitment and the decision being finalised in the same budget year. No commitment can be made before 2007. Eligibility of expenditure is the date of submission of the programme, or 1 January 2007, whichever comes earlier.

Subsequent annual commitments shall be made on the basis of the Decision and shall be effected as a general rule by 30 April each year.

## 2.5. Modifications to programming documents (article 51, 75§2)

### Article 51 of general Regulation

#### *National contingency reserve*

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

### Article 75(2) of general regulation

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

Article 51 provides for a Member State to reserve an amount (1% of convergence objective or 3% of regional competitiveness and employment objective as a national contingency reserve. This can either be as a separate



"programme" or as a part of each programme not allocated to a specific priority axis. See text at end of chapter for consequences of the various possibilities for using this reserve.

Article 75§2 provides for transfers of commitment appropriations between operational programmes and from the national contingency reserve. A request for such transfers must reach the Commission by September 30<sup>th</sup> of the relevant year at the latest. Financial plans must be consistent with programme commitments made in past years, and so programme figures relating to years in the past cannot be changed.

It is essential that any change proposed under Article 33 which requires changes to that year's programme commitments (i.e. transfers between programmes within or between funds) must also be submitted by 30 September in order to allow sufficient time for the completion of the relevant Commission financial and decision making processes. The Commission has 3 months in which to take a decision and reallocate the funds concerned.

It is clear that making use of the possibility for these two reserves will create an additional work-load throughout the period.

## 2.6. Pre-financing

### Article 82 of general Regulation

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

The pre-financing payment ("advance") of the programme for the Structural Funds or for the Cohesion Fund will be paid automatically following the Commission decision. This payment will be split over several budget years. This advance payment is intended to be used as a means of accelerating payments to beneficiaries. The higher percentage will apply to the territorial cooperation programmes if any of the Member States is in EU10.

	2007	2008	2009	Total
SF EU15	2%	3%	-	5%
SF EU10	2%	3%	2%	7%
CF EU15	2%	3%	2.5%	7.5%
CF EU10	2.5%	4%	4%	10.5%

## 2.7. Interim payments (articles 76, 77, 85 - 87)

### Article 76 of general Regulation

*Common rules for payments*

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

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

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

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

#### Article 77 of general regulation

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

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

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

#### Article 85 of general Regulation

##### *Interim payments*

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

#### Article 86 of general Regulation

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

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

(a) *the Commission must have been sent a application for payment and a statement of expenditure in accordance with Article 78;*

(b) *no more than the maximum amount of assistance from the Funds as laid down in the decision of the Commission approving the operational programme has been paid by the Commission during the whole period for each priority axis;*

(c) *the managing authority must have sent the Commission the most recent annual implementation report in accordance with Article 67(1) and (3);*

(d) *there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.*

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

#### Article 87 of general Regulation

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

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

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

Interim and final payments must be requested by the certifying authority using the computer application set up by the Commission ("SFC 2007"). Payments are calculated on the basis of the financial plans at the priority axis level, by multiplying the certified eligible expenditure (either total or public depending on the decision which is also indicated by the Member State in SFC2007) by the ratio of Community funding to total (Community and National) eligible funding for each priority axis in the active Commission decision, limited to the total public contribution and the total amount planned for each priority axis, in accordance with the provisions of article 77.

The payment made will be the amount calculated by SFC 2007. Article 86§1 does not limit the number of payment claims to 3 per programme per year. Payments claimed after October 31 will be treated in that year if resources are available, but requests should be spread throughout the year. Payments are posted to the oldest commitment still open.

## **2.8. Payment forecasts**

#### Article 76 (3) of general Regulation

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

In order to draw up a budget and justify it in front of the budget authority, reliable payment forecasts for the current year and the next year are an

essential source of information. These forecasts should relate to interim (or final) claims and should therefore not include the payment of the pre-financing. These forecasts must be submitted no later than the end of April (article 76§3), but sooner if they are available. Forecasts should be submitted by the relevant authority in the Member States using the SFC 2007 computer application for 2007-2013 and must be given per programme per fund. These forecasts do not constitute a limit for actual payments to a particular programme or Member States. The only limit is the payment budget made available for the year.

## **2.9. First interim payment**

### Article 82 (2) of general Regulation

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

### Article 85 of general Regulation

#### *Interim payments*

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

The first payment claim must be submitted within 24 months of the date on which the Commission pays the first instalment of pre-financing payment (using the Commission's banking date as reference). If no acceptable payment application is received by this date the total pre-financing paid must be reimbursed. This repayment of the pre-financing does not reduce the Community funding to the programme.

No interim payment will be reimbursed before the report on the management and control systems referred to in article 71§2 are accepted. If only one priority axis is concerned by a reservation, then payments can proceed to the other priority axes.

## **2.10. Interrupting and suspending payments (articles 87, 91-92)**

### Article 87 of general Regulation

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

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

2. *Subject to available funding, and the absence of a suspension of payments in accordance with Article 92, the Commission shall make the interim payment no later*

*than two months after the date on which a application for payment meeting the conditions referred to in Article 86 is registered with the Commission.*

#### Article 91 of general Regulation

##### *Interruption of the payment deadline*

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

*(a) in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems;*

*(b) the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected.*

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

#### Article 92 of general Regulation

##### *Suspension of payments*

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

*(a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or*

*(b) expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or*

*(c) there is a serious breach by a Member State of its obligations under Article 70(1) and (2).*

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

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

Payments should normally be made in full within 2 months of receipt of the payment claim at the Commission, subject to the availability of funds. Nevertheless the payments will be interrupted if one of the following cases

below arises. In all cases the certifying authority will be informed of the reason for the interruption.

- If there are indications of a significant deficiency in management or control systems.
- If a serious irregularity has not been corrected.

Payments to an operational programme may be suspended by a Commission decision at any time, independently of whether a payment claim has been received. If measures are not taken to correct the situation resulting in suspension, all or part of the Community contribution to the programme may be cancelled.

## **2.11. Automatic decommitment (articles 93 - 97)**

### Article 93 of general Regulation

#### *Principles*

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

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

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

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

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

### Article 94 of general Regulation

#### *Period for interruption for major projects and aid schemes*

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

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

#### Article 95 of general Regulation

##### *Period of interruption for legal proceedings and administrative appeals*

*The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations suspended by a legal proceeding or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission information stating the reasons by 31 December of the second or third year following the year of the budget commitment pursuant to Article 93.*

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

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

#### Article 96 of general Regulation

##### *Exceptions to the automatic decommitment*

*The following shall be disregarded in calculating the automatic decommitment:*

*(a) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second or third year following the year of the budget commitment pursuant to Article 93 and in accordance with Articles 91 and 92. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;*

*(b) that part of the budget commitment for which a application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources;*

*(c) that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of force majeure seriously affecting implementation of the operational programme. The national authorities claiming force majeure shall demonstrate its direct consequences on the implementation of all or part of the operational programme.*

#### Article 97 of general Regulation

##### *Procedure*

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

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

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

For the Structural Funds automatic decommitment is operated at the level of each programme and each fund. For this programming period, the period of decommitment is extended to 3 years for 2007 to 2010 for the new Member States together with Portugal and Greece. (It should not be referred to as n+3 as this is already used to refer to an article of the Financial Regulation with different effect).

The part to be decommitted can be reduced if there is a delay in approving major projects or aid schemes. See the document CDRR-03-0024-01 in Annex 9 to the aide-mémoire.

## **2.12. Partial closure (article 88)**

### Article 88 of general Regulation

#### *Partial closure*

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

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

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

(a) *a statement of expenditure relating to the operations referred to in paragraph 1;*

(b) *a declaration for partial closure in accordance with Article 62(1)(d)(iii).*

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



Partial closure within an operational programme is subject to the submission of the documents described in article 88. It does not override the conditions laid down in articles 76 or 78. The intention is to be able to close operations within a programme so that the date of retention of documents relates to that operation, rather than the entire operational programme. Partial closure is performed at the request of the Member State, and may be performed in any year if operations are completed. It does not allow for payments to exceed 95% of the total fund contribution (article 79).

There are no financial operations linked to a partial closure, and the pre-financing is not in any way affected.

### **2.13. Full closure (article 89)**

#### Article 89 of general Regulation

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

1. *The Commission shall pay the final balance provided that:*
  - (a) *the Member State has sent an application for payment comprising the following documents by 31 March 2017:*
    - (i) *an application for payment of the final balance and a statement of expenditure in accordance with Article 78;*
    - (ii) *the final implementation report for the operational programme, including the information set out in Article 67;*
    - (iii) *a closure declaration referred to in Article 62(1)(e); and*
  - (b) *there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.*
2. *Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the decommitment of the final balance, in accordance with Article 93.*
3. *The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(a)(iii) within five months of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within that five-month period.*
4. *Subject to available funding, the Commission shall pay the final balance within no more than 45 days from the later of the following dates:*
  - (a) *the date on which it accepts the final report in accordance with Article 67(4); and*
  - (b) *the date on which it accepts the closure declaration referred to in paragraph 1(a)(iii) of this Article.*

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

*(a) the payment of the final balance determined by the Commission on the basis of the documents referred to in paragraph 1;*

*(b) the sending of a debit note for sums unduly paid by the Commission to the Member State in respect of the operational programme;*

*(c) the decommitment of the final balance of the budgetary commitment.*

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

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

An operational programme is closed following the reception of all the necessary documents as described at article 89.

### **3. THE KEY DIFFERENCES COMPARED TO THE 2000-06 PROGRAMME PERIOD**

- Indicative list of major projects to be submitted with the programme request.
- Application of programming financial discipline to the Cohesion Fund
- A contingency reserve programme may exist.
- No programme complement.
- Pre-financing split over 2 or 3 years and different for Member States joining after 2004.
- First interim payment conditioned by receipt of assurance on control and management systems.
- First interim payment must be submitted within 24 months of the date of paying the first instalment of the pre-financing.
- Reimbursements calculated at the priority axis level rather than at the level of the measure as in the period 2000-06. There shall be no annual ventilation of allocations to the priority axis.
- Period for automatic decommitment extended to 3 years for 2007 to 2010 for Member States who joined since 2004 and Portugal and Greece.

## National Performance Reserve and National Contingency Reserve

The understanding of articles 50 & 51, together with article 75 §2 of the general Regulation, is as follows.

Each Member State must submit a NRSF consisting of an annual breakdown of EU funding for a number of Operational Programmes, together with optionally a National Performance Reserve (NPR) and optionally a National Contingency Reserve (NCR). The NCR can be 1% of the Structural Funds contribution for the Convergence objective and 3% for the Competitiveness and Employment objective. The NPR can be 3% of the total allocation for each objective.

<i>Year</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
OP 1	A	A	A	A	A	A	A
OP 2	B	B	B	B	B	B	B
...							
NCR	Y	Y	Y	Y	Y	Y	Y
NPR	0	0	0	0	X	X	X
<b>NRSF</b>	T	T	T	T	T	T	T

A Member State may choose not to have a NPR, and in this case, uses up all the funding in the NRSF from the start with the other programmes. If a MS chooses to have a NPR, the funding must be allocated no later than 2011 by the MS. Only funding for 2011, 2012 and 2013 should be included in the NPR.

A Member State may choose (a) not to have a NCR; (b) to have a NCR as a specific national programme or (c) to have a NCR as a priority axis within several programmes.

Any credits allocated in the NCR for a given year must be allocated within that year to a "real" priority axis.

There appear to be two distinct cases which could be considered.

- **Case 1**

There is a specific programming dealing with NCR. This NCR consists of just one (Community) figure per year, and this figure is allocated to 1 or more Priority Axes.

This MS choice has 5 practical impacts:

- a specific CCI number should be allocated to this programme

- a national co-financing should be foreseen at the programming stage at the programme level
- only a part of article 37.1 requirements should be provided at the programming stage (a), e)i), g)) and another part of requirements could be provided when a real sectoral or territorial crisis takes place ( c), e)ii). Another part of article 37.1 will be never applied because of irrelevance (b), d), f), h) )
- This programme could be considered as a pure reserve, and then should not be committed in April (under the "general rule") but left until the allocation to separate programmes at the end of the year.
- each year in September, the designated responsible body in the MS should inform the Commission of the implementation of NCR for the current year :

- Case 1a

The NCR is not consumed in September. Then the amount still available for the year concerned can be allocated to 1 or more Priority Axes in other Operational Programmes in September of each year. This would require many decisions and modifying commitments.

- Case 1b

There has been a sectoral or territorial crisis and the money has to be used. Then the amount reserved has to be allocated to priority axes within the same programme in September, together with National co-financing, together with additional elements required by article 37.1. This would only require one decision each year, and one commitment only.

- Case 2

There is a no specific programming dealing with NCR. There is a contingency reserve within each programme, and this reserve is allocated to 1 priority within the same programme.

This MS choice has 5 practical impacts:

- there is no need for a specific CCI number;there is no need for a national co-financing foreseen at the programming stage (regulation requires this national co-financing only at the programme level);all article 37.1 requirements should be provided at the programming stage for the entire programme and not only for management of NCR;commitments should be made in April for the entire programme, including the amount allocated to the NCR in the programme;each year in September, the designated responsible body in the MS should inform the Commission of the implementation of NCR for the current year.Case 2a

The reserve is allocated to priorities within the same programme. This would require a Commission decision for each of these programmes modifying the financial plan by priorities, but no financial operation.

- Case 2b

The allocation of the reserve involves moving credits between programmes. In this case there would be several Commission decisions and several financial operations (decommitment –recommitment).

# CHAPTER 7: IMPLEMENTING PROVISIONS

## 1. INTRODUCTION

Au cours de la période de programmation 2007-2013, les États membres seront responsables de la mise en œuvre des programmes cofinancés par les Fonds structurels et le Fonds de Cohésion, de l'établissement du système de suivi, de la collecte des données relatives à la mise en œuvre, de la transmission des rapports annuels d'exécution à la Commission et de l'institution des comités de suivi.

Bien que le principe de subsidiarité s'applique dans la phase de la mise en œuvre des programmes, la Commission est habilitée à accéder à l'ensemble des informations concernant les actions cofinancées. Le rapporteur effectue le suivi de la mise en œuvre par sa participation aux réunions du comité de suivi, l'examen des rapports annuels d'exécution des États membres, les examens annuels avec l'autorité de gestion, l'évaluation, les visites sur place, des contacts actifs avec les autorités responsables et le suivi de l'évolution économique et politique du pays et de la région considérés.

Le suivi des programmes, dans tous ses volets qualitatifs et financiers et, en particulier la tâche consistant à veiller à ce que les systèmes de suivi adéquats soient en place et opérationnels dès le début de la programmation, reste une importante mission de la Commission en tant qu'organe d'exécution du budget de l'Union européenne.

Comme l'instrument juridique du "Groupement Européen de Coopération Territoriale" pourra être utilisé au-delà des programmes et projets dans le cadre de l'objectif "Coopération territoriale européenne", cet instrument innovateur de mise en œuvre sera décrit dans le présent chapitre.

## 2. GUIDELINES FOR THE DESK OFFICERS

### 2.1. Bodies and authorities responsible for the management and control systems

Le Programme opérationnel doit comprendre la description des Autorités et des Organismes impliquées dans la gestion et le contrôle du Programme ainsi que la description des tâches et des responsabilités de chaque Autorité et Organisme (Article 59 du Règlement Général). Le respect du principe de séparation de fonctions entre les Autorités et les organismes (Article 58(b) du Règlement Général sera expliqué dans le programme opérationnel. Le point n°2.4 du Chapitre 3 détaille les informations à inclure dans le Programme opérationnel par l'Etat membre.

Les Etats membres doivent fournir à la Commission la description des systèmes de gestion et de contrôle en accord avec l'article 71 du Règlement Général.

#### Article 71(1) General Regulation

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

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

Avant la première demande de paiements ou au plus tard 12 mois après l'approbation de chaque programme opérationnel, l'Etat Membre devra soumettre à la Commission la description de ses systèmes de gestion et de contrôle accompagnée d'un rapport qui présente les résultats d'une évaluation de la mise en place des systèmes et contient un avis sur leur conformité avec les dispositions des articles 58 à 62 du Règlement Général. La description de ces systèmes devra couvrir l'organisation et les procédures des autorités en charge des programmes, y compris celles des organismes intermédiaires (incluant donc ceux qui gèrent une subvention globale).

Les articles 21 à 23 et l'annexe IX d) du règlement d'application détaillent les informations à communiquer par les Etats membres concernant chaque autorité et chaque organisme.

Les principales dispositions Communautaires pour la période de programmation 2007-2013, relatives à la gestion et au contrôle, sont détaillées à l'annexe 8 de l'aide-mémoire.

### 2.2. Eligibility

#### 2.2.1. Rappel des dispositions juridiques

#### Règlement général : article 56 (Eligibilité des dépenses)

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



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

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

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

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

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

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

#### Règlement FSE: article 11 (Eligibilité des dépenses)

1. The ESF shall provide support towards eligible expenditure which, notwithstanding Article 53(1)(b) of Regulation (EC) No1083/2006 may include any financial resources collectively constituted by employers and workers. The assistance shall take the form of non-reimbursable individual or global grants, reimbursable grants, loan interest rebates, micro-credits, guarantee funds, and the purchase of goods and services in compliance with public procurement rules.

2. The following expenditure shall be ineligible for a contribution from the ESF:

- (a) recoverable VAT;
- (b) Interests on debt;
- (c) Purchase of furniture, equipment, vehicles, infrastructure, real estate and land.

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

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

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

#### Règlement FEDER : article 7 (Eligibilité des dépenses)

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

(a) *interest on debt;*

(b) *the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned. In exceptional and duly justified cases, a higher percentage may be permitted by the managing authority for operations concerning environmental conservation;*

(c) *decommissioning of nuclear power stations;*

(d) *recoverable value added tax.*

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

(a) *expenditure shall be programmed within the framework of an integrated urban development operation or priority axis for areas experiencing or threatened by physical deterioration and social exclusion;*

(b) *the allocation to housing expenditure shall be either a maximum of 3 % of the ERDF allocation to the operational programmes concerned or 2 % of the total ERDF allocation;*

(c) *expenditure shall be limited to:*

— *multi-family housing, or*

— *buildings owned by public authorities or non-profit operators for use as housing designated for low-income households or people with special needs.*

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

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

#### Regulation ERDF : Article 13 (Rules on eligibility of expenditure for co-operation programmes)

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

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

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

#### Règlement Fond de Cohésion : article 3 (Eligibilité des dépenses)

1. *The following expenditure shall not be eligible for a contribution from the Cohesion Fund:*

1) *interest on debt;*

2) *the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;*

3) *housing;*

- 4) *decommissioning of nuclear power stations; and*
- 5) *recoverable VAT.*

Règlement d'application : article 21 point 7

*Information concerning the managing authority, the certifying authority and intermediate bodies*

*As regards the managing authority, the certifying authority and each intermediate body the Member State shall provide to the Commission the following information:*

*(7) eligibility rules laid down by the Member State and applicable to the operational programme*

Besides and above formal eligibility rules, the following principles shall apply:

- sound financial management, i.e. effective, efficient and economic use of the Funds
- good value for money and cost/efficiency
- legality and regularity

*2.2.2. Implications pratiques:*

Même si dorénavant, les Etats Membres ont une plus grande autonomie en terme d'éligibilité des dépenses, (les règles d'éligibilité seront établies au niveau national cf. article 56 paragraphe 4), les règlements y compris les principes du règlement financier prévoient certaines dispositions sur l'éligibilité; notamment, il conviendra que les rapporteurs gardent à l'esprit:

Eligibilité des dépenses:

- éligibilité géographique/thématique avec le cas qu'il faudra prévoir de projets à cheval sur plusieurs objectifs / programmes;
- champ d'application de l'assistance (articles 3-6 du Règlement FEDER, article 2 du Règlement Fonds de Cohésion et article 3 du Règlement Fonds Social);
- expenditure relates to approved projects;
- respect des critères de sélection établis par le Comité de Suivi dans les six mois après l'approbation du programme concerné (Article 65(a));
- date d'éligibilité des dépenses pour une opération (cf. Article 56(1) et (3));
- éligibilité spécifique définie au niveau communautaire par les Règlements des Fonds (voir dans la boîte ci-dessus sous 2.1);
- revenue generating projects;

- principe de réalité de la dépense déclarée à la Commission correspondant à une opération effectivement réalisée et une dépense payée par le bénéficiaire (real cost principle).
- ATTENTION: Exceptions covered by Article 56(2) consider in-kind contribution, depreciation and overheads as eligible, even though they do not constitute expenditure "actually been paid". Article 78(2) allows that advances paid to the beneficiaries by the body granting the aid may be included into the statements of expenditure. In both cases the articles define the specific conditions.
- N.B. L'axe prioritaire prévu à l'article 11 du règlement FEDER (régions ultrapériphériques) finance des projets destinés à compenser les effets liés aux handicaps des régions ultrapériphériques (c'est-à-dire, des surcoûts).
- C'est à l'Autorité de Gestion de s'assurer que ces différents critères d'éligibilité sont respectés (Article 60 b) du Règlement général).

Régularité des dépenses, couvrant notamment les aspects suivants:

- règles des marchés publics
- règles liés aux régimes d'aide, dispositions environnementales et égalité de chances
- durability of operations
- compliance with projects rules
- existence de cofinancements publics
- publicité / communication sur l'intervention des fonds

N.B. L'État membre doit fournir à la Commission les informations concernant les règles d'éligibilité nationales établies et applicables au programme opérationnel au plus tard à la date de la communication de la description des systèmes de gestion et de contrôle et du rapport sur la conformité des systèmes avec les dispositions réglementaires (Article 71(2) du Règlement CE N° .../... et Articles 20 et 21 du Règlement .../.... Règlement Commission).

N.B. Article 13 of the ERDF Regulation authorises the Commission to establish common rules on the eligibility of expenditure for Co-operation programmes. See section 2.10.6 of chapter 9 for more details.

### 2.2.3. *Flexibility facility*

#### Article 34 of general Regulation

#### *Specific character of the Funds*

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

In certain cases the possibility to finance supporting actions from the scope of assistance of the other Fund (up to a level of normally 10% or exceptionally 15%, of the priority axis<sup>34</sup>) can be particularly useful. For instance in cases where training of people is necessary in order to successfully implement an ERDF activity e.g. aiming at modernisation of waste management system (e.g. technical training for a limited number of employees who will operate a modernised facility), or vice versa, in cases where particular investments are required to increase the accessibility of a certain ESF training for disabled persons. The coherence of actions under the ESF and the ERDF will be improved when each Fund finances actions from the other Fund's field of interventions, in a residual manner. The actions must be directly linked to the main interventions (i.e. the training must be provided to the particular people involved in operating the waste management facility and similarly the investments under ESF must relate to the particular ESF operation). Furthermore, the interventions must be always be justified in terms of sound financial management and implemented in a complementary manner.

Therefore Article 34(2) of the draft General Regulation introduces the flexibility facility between ERDF and ESF, under which - within certain limits - one Fund can support activities which would normally fall under the scope of the other Fund but which are “necessary for the satisfactory implementation of the operation” supported by the first Fund. **This is an option offered to the Member States** in order to facilitate the implementation of single Fund operational programmes.

In order to ensure full respect for the distinctive features of the ERDF and the ESF, as established in the EC Treaty (respectively articles 160 and 146), flexibility between the funds can only be of a complementary nature, for co-financing with one fund activities falling under the scope of the other fund. Thus, it is never possible to finance an entire priority axis in an operational programme dedicated to the actions of the other Fund.

#### Criteria defining actions falling within the scope of assistance from the other Fund

The flexibility facility between ERDF and ESF should not undermine the very specific nature and objectives of the ERDF and the ESF. For this reason Article 34(2) restricts flexibility facility to actions **that are both necessary for the successful implementation of an operation and that have a direct link** to that operation. This means that the flexibility reflects the context and

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<sup>34</sup> The 10% maximum is raised to 15% by Article 3(6) of the ESF-Regulation (social inclusion priority) and by Article 8 of the ERDF-Regulation (sustainable urban development).

the content of a specific operation, the field of interventions for each Fund, and the objectives of the relevant programme and priority axis.

#### Meaning and programming of the 10%

The regulation limits flexibility facility to **10% of the EU contribution at the level of the priority axis**. Since this 10% is a maximum, flexibility facility for priority axes will range from 0% to 10%.

**It is not necessary to programme and quantify in exact terms the desired degree of flexibility at the beginning of the programming period.** However, if a Member State decides to apply this flexibility, it should indicate as far as possible which axes will be concerned.

The intention is not to endow each programme with a priority axis for financing actions from the other Fund (this would be contrary to the notion of the 10% ceiling). Instead, the aim is to allow – within a priority axis and in duly justified circumstances – the limited financing of operations, projects or parts of projects that belong to the intervention field of the other Fund.

It should be noted that the action which falls under the scope of the other Fund does not change the intervention code (the code applied is the code of the main Fund intervening in the operation).

N.B. The 10% maximum is raised to 15% by Article 3(7) of the ESF-Regulation (social inclusion priority) and by Article 8 of the ERDF-Regulation (sustainable urban development). An ERDF-programme with a specific priority axis for sustainable urban development allows for a maximum of 15% of cross-financing in that priority axis, whereas the other priority axes of that programme only allow for a maximum of 10% of cross-financing.

#### Identification of the operation's component that falls within the 10%

For each operation that is composed of a group of projects and submitted for approval, it should be possible to identify the projects to be counted within the 10 % flexibility. Thus, Member States should be encouraged, where appropriate, to provide brief description of practical arrangements ensuring the identification of the use of the flexibility facility.

Where an operation submitted for approval allows parts or phases that belong mainly to the intervention field of the other Fund to be distinguished, these should be identified at the outset and classified as part of the 10%.

It's up to the Managing Authority to verify the respect of these thresholds (Article 60b of the General Regulation). Information on flexibility facility will be covered in the annual reports (see chapter 8 and Annex XVIII of the implementing Regulation). In case of exceeding the limits, the expenditure linked to these activities will be considered as ineligible and will lead to financial corrections (during the life time of the programme or at closure).

#### Eligibility rules applied

**The project expenditure will be subject to the eligibility rules of the relevant Fund in the field of interventions.** For instance, where an OP is financed by the ESF, a specific project financing ERDF-type measures (such as infrastructure or equipment) will have to follow ERDF rules, notably article 7 of the ERDF, and vice versa.

#### Public procurement procedures

Given that the actions are justified by the need to ensure good implementation of an operation and have a direct link to that operation, one could envisage a single call for tenders<sup>35</sup>, where appropriate, or a single call to submit applications (and this would even be recommended).

#### Monitoring and control of flexibility facility

**The actions falling under a flexibility facility must be identifiable and kept** by the managing authority. This – as well as all data relating to the operation – must be accessible for monitoring and audit in order to control for respect of the 10% ceiling. The Member States do not need to demonstrate respect of the 10% ceiling each year, but only at the moment of closure of a programme. If the ceiling of 10% is exceeded, a financial correction will be carried out in order to ensure the 10% ceiling is met. These cross-financed operations or projects will be subject to the audit procedures laid down in the regulation in their entirety and **will be controlled by the auditors of the Fund through which they are financed.**

### 2.3. Comités de suivi

#### 2.3.1. *Rappel des dispositions juridiques*

##### Article 63 Comité de Suivi

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

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

##### Article 64 Composition

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

*2. At its own initiative or at the request of the monitoring committee, a representative of the Commission shall participate in the work of the monitoring committee in an advisory capacity. A*

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<sup>35</sup> In the case of the award of a public subsidy to a project, the same comment can be made: a single award covering both aspects.

*representative of the EIB and the EIF may participate in an advisory capacity for those operational programmes to which the EIB or the EIF makes a contribution.*

#### Article 65      Compétences du Comité de suivi

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

*(a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of the operational programme and approve any revision of those criteria in accordance with programming needs;*

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

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

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

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

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

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

#### Article 3 of the Commission Implementing Regulation: Examination of compatibility of the communication plan

*The Member State or the managing authority shall submit the communication plan to the Commission within four months of the date of adoption of the operational programme or, where the communication plan covers two or more operational programmes, of the date of adoption of the last of these operational programmes.*

*In the absence of observations made by the Commission within two months of receipt of the communication plan, the plan shall be deemed to comply with Article 2 (2).*

*If the Commission sends observations within two months of receipt of the communication plan, the Member State or the managing authority shall within two months send a revised communication plan to the Commission.*

*In the absence of further observations by the Commission within two months of submission of a revised communication plan, it shall be considered that the communication plan may be implemented.*

*The Member State or the managing authority shall commence the information and publicity activities foreseen in Articles 5, 6 and 7, where relevant, even in the absence of the final version of the communication plan.*

Les comités de suivi relèvent de la compétence, y compris juridictionnelle, de l'EM (Art. 63, paragraphe 1).



Bien que cela ne soit pas explicitement prévu par le règlement, la composition du Comité de Suivi devrait refléter les principes de partenariat et d'égalité des genres (Art. 11, paragraphe 2, et Art. 16).

En règle générale, il est attendu des rapporteurs qu'ils assistent aux comités de suivi des programmes pour lesquelles ils ont la charge.

### 2.3.2. *Règlement intérieur*

Le règlement intérieur du comité de suivi devra fournir des indications sur la fréquence annuelle minimale de réunions à tenir, sur les modalités de consultation du comité, en détaillant pour les consultations par procédure écrite les délais à respecter. Il devra aussi indiquer la façon par laquelle le comité prend ses décisions (majorité, majorité absolue, unanimité, etc.).

La Commission sera informée de ces règles, au plus tard lors de l'adoption de son règlement intérieur par le comité de suivi.

Contenu Type du règlement intérieur du Comité de Suivi:

- composition du comité<sup>36</sup> et présidence ;
- fréquence de réunion
- attributions
- modalités de consultation du Comité (y compris procédure écrite)
- mode de décision (p.ex. majorité, unanimité, voix consultatives / délibératives)
- dispositions liées à l'envoi des documents préparatoires (notamment délai minimum 10jours ouvrables)
- dispositions liées à rédaction/diffusion des conclusions du Comité
- durée de validité
- organisation du chevauchement entre deux périodes de programmation [si nécessaire]

### 2.3.3. *Convocation et préparation des réunions du comité de suivi*

Une bonne pratique suivie pendant la période 2000-2006 a été l'établissement d'un **calendrier indicatif des réunions du/des comité(s) de suivi par période de 12 mois par** l'Etat membre, ou par l'Autorité déléguée par celui-ci à cet effet. Le maintien de cette pratique est vivement conseillée pour la période 2007-2013, car, en l'absence d'un calendrier général des

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<sup>36</sup> Le rapporteur doit s'assurer de la possibilité de faire venir des experts aux réunions du comité, y compris des experts de la Commission.

réunions, il sera très difficile de planifier le travail de préparation et la participation des services de la Commission aux différentes réunions.

Chaque réunion devrait être convoquée au **minimum 10 jours ouvrables** avant la date de la réunion. **Au cas où le calendrier indicatif susvisé n'est pas respecté, ce délai devrait être porté à un mois.**

#### Rôle de la Commission<sup>37</sup> :

Une participation efficace et active des représentants de la Commission implique des consultations et des concertations internes préalables. Le cas échéant, avant chaque réunion du CdS, la DG REGIO et/ou la DG EMPLOI organisent une réunion interservices, afin de préparer les questions à l'ordre du jour et de coordonner les positions des services de la Commission responsables des matières à débattre. Il est souhaitable de fournir aux États membres, avant la réunion, des commentaires sur les points à l'ordre du jour et les procédures.

La Commission peut prendre l'initiative de proposer des points à l'ordre du jour du CdS.

#### 2.3.4. *Disponibilité et qualité de la documentation*

Chaque point inscrit à l'ordre du jour, devrait être accompagné d'un document destiné à faciliter la discussion en réunion, permettant ainsi aux membres du Comité et à la Commission de travailler efficacement.

Le règlement intérieur du Comité de Suivi devrait contenir des dispositions relatives à l'envoi à temps des documents de séance de ses réunions. En règle générale, les documents soumis à discussion devraient être envoyés aux membres du Comité de suivi et aux services de la Commission au minimum 10 jours ouvrables avant la réunion. Pour les services de la Commission, ce délai permet notamment d'assurer une bonne coordination inter-service, y compris par la tenue de réunion préparatoire le cas échéant. En cas de non respect des délais inscrits dans le Règlement intérieur, le représentant de la Commission se doit de soulever ce point en début de réunion (par exemple au moment de l'approbation de l'ordre du jour), en soulignant l'importance d'une meilleure préparation pour ne pas porter préjudice à la qualité des débats au sein du Comité.

#### 2.3.5. *Déroulement de la réunion*

Au-delà des points habituels sur le suivi, l'ordre du jour du CdS peut contenir aussi des points visant l'échange de vues thématique ou l'approfondissement d'une question qui intéresse plus particulièrement la mise en œuvre du programme. Dans les cas où les réunions du comité de suivi présentent des

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37 Remarque rédactionnelle : afin de faciliter la lisibilité de texte, le terme de « représentant de la Commission » couvre des représentants des deux sexes.

ordres du jour trop chargés, l'Autorité de gestion ou la Commission pourrait prendre l'initiative de proposer la création de groupes de travail thématiques ou des discussions thématiques dans le cadre des CdS.

Les délibérations au sein du Comité de suivi devraient refléter la responsabilité collégiale de cet organe. Il appartient au Président du Comité de suivi de veiller à ce que les discussions impliquent tous les participants, en évitant la succession de discussions bilatérales.

### Rôle de la Commission

Compte tenu des fonctions consultatives de la Commission, au cours de la réunion du CdS, le représentant de la Commission n'a pas seulement un rôle d'observateur: il est non seulement consulté mais également appelé à fournir des conseils et des suggestions au CdS.

La bonne pratique vérifiée pendant la période 2000-2006, consistant à organiser des réunions préparatoires avec l'autorité de gestion, devrait également être fortement encouragée pour la période 2007-2013. En effet, ces réunions permettent très souvent une discussion très approfondie sur des questions techniques complexes de façon à arriver au comité de suivi avec une bonne connaissance des points de vue des deux côtés.

#### 2.3.6. *Éléments clé à analyser dans les comités de suivi*

Lors des réunions du Comité de suivi, plusieurs éléments/composantes essentiels du suivi, au sens large, des interventions devraient être passés en revue:

- le système de suivi/monitorage : Analyser le système de suivi pour s'assurer qu'il est opérationnel, contient les indicateurs financiers et les indicateurs mentionnés à l'article 37(1), à compter du début de la période de programmation. Le comité doit aussi vérifier que l'alimentation des indicateurs choisis pour suivre le programme est assurée de façon régulière;
- la mise en place des systèmes de gestion et de contrôle puis son fonctionnement pendant la période de programmation;
- les rapports de contrôle y compris des éventuelles observations de la Commission suite à l'examen de ce rapport;
- les rapports annuels d'exécution et, le moment venu, le rapport final d'exécution (voire à cet effet le chapitre sur le rapport annuel);
- les résultats de l'examen annuel avec l'autorité de gestion (art. 68 du Règlement général) et les éventuels commentaires de la Commission à l'autorité de gestion, aussi bien que les actions entreprises par celle-ci pour répondre à ces commentaires ;
- l'évaluation (articles 47, 48 et 49).

2.3.7. *Autres activités à valeur ajoutée de la Commission (lors du comité de suivi ou des missions dans l'EM)*

Diffusion d'informations et échange d'expériences

Peut comprendre des visites de projets, la présentation de projets au cours des réunions du CdS et dans d'autres régions et/ou pays, la présentation aux médias des activités et projets du programme par le canal des sites Web et brochures de la Commission et des États membres etc.

La conformité avec la législation communautaire et la prévention des irrégularités relèvent de la responsabilité des autorités nationales. Le rapporteur ne peut remplacer les différentes DG de la Commission dans l'identification et l'évaluation des infractions possibles mais peut sensibiliser les autorités nationales aux risques liés aux infractions et à leurs conséquences sur les paiements intermédiaires. Les visites fournissent également l'occasion de mieux s'informer sur le fonctionnement des systèmes de suivi et de gestion des Fonds structurels, de s'assurer de la visibilité de l'intervention communautaire et de fournir des informations sur les règles et procédures communautaires.

Le rapporteur devra informer les services concernés de la Commission en cas de suspicion d'irrégularité. Pour être en mesure d'assumer cette tâche, il doit disposer de l'aide nécessaire (lignes directrices, informations régulières sur l'adoption d'actes législatifs communautaires et les infractions, informations sur les interprétations de la Commission, les questions d'éligibilité, etc.).

Suivi d'autres programmes de l'UE en faveur de la région/du pays considéré et autres politiques communautaires

Les programmes des Fonds structurels et d'autres programmes concernant un pays (ou une région) particulier(e) sont répartis entre différentes directions et entre directions générales. Introduire de façon systématique à l'ordre du jour du comité de suivi un point de situation de l'ensemble des programmes qui interviennent dans la région (ou le pays) permet d'avoir une vue d'ensemble.

Les services de la Commission qui se déplacent dans les régions, peuvent aussi saisir l'occasion pour diffuser certains aspects qui relèvent des autres politiques communautaires mais qui ont intérêt pour la gestion des Fonds par les autorités régionales et/ou nationales (par exemple, questions liées à l'environnement, aux PME, à la concurrence, à la société de l'information, aux règles de marchés publics, etc.).

Suivi de la situation socio-économique et politique régionale et nationale

Ce suivi est important pour être en mesure de placer la politique de cohésion dans un contexte précis (programmes nationaux liés à la stratégie de Lisbonne révisée, par exemple), de prendre des décisions tenant compte à la fois des stratégies européennes et des spécificités locales.

### 2.3.8. *La suite des comités de suivi*

Après chaque réunion du Comité de suivi, l'autorité de gestion devra rédiger un PV de séance et le diffuser à l'ensemble des membres du CdS. Ce PV devra contenir une liste de toutes les décisions prises en séance. Le règlement intérieur devra préciser les modalités de validation et de diffusion de ces comptes-rendus.

#### Rôle de la Commission

Après chaque réunion du CdS, la DG REGIO et/ou DG EMPLOI préparent un rapport synthétique sur les principales décisions prises en comité (le cas échéant contenant les mesures à prendre par la Commission) et le distribue, pour info, aux directions générales consultées avant la réunion.

Si elle l'estime utile, elle transmettra aussi à d'autres services - concernés par les discussions du comité de suivi - les extraits nécessaires du rapport.

Ensuite, la DG REGIO et/ou DG EMPLOI assure, en coopération avec les autres DG concernées, le monitoring du suivi des décisions prises par le comité de suivi et prépare, le cas échéant, des recommandations concernant l'amélioration de l'assistance.

### 2.3.9. *Principaux changements par rapport à la période 2000-2006*

Par rapport à la période 2000-2006 les compétences du comité de suivi restent semblables, à l'exception de deux points :

- Il n'a plus à adapter ou confirmer le complément de programmation ;
- Il est informé du rapport annuel de contrôle et des suites données par l'autorité de gestion à ce rapport (Art. 65(e)).

## 2.4. **Système de suivi**

### Article 66 Arrangements for monitoring

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

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

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

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

La Commission doit s'assurer que le système de suivi est opérationnel dès le début de la période de programmation. Ce système de suivi devra être en mesure de fournir toutes les informations sur la mise en œuvre, conformément à ce qui aura été convenu lors des négociations du programme.

La notification électronique des données permettant le suivi doit passer par SFC et respecter, le cas échéant, le format des tableaux annexés au règlement d'application.

Des données de suivi à jour et un nombre limité d'indicateurs essentiels de bonne qualité permettront d'évaluer l'état d'avancement du programme et de s'assurer que la stratégie du programme est adaptée aux objectifs fixés.

Le système de suivi devra couvrir également le respect des allocations ou des plafonds spécifiques (p.ex. 10% de cross-financing; allocation spéciale en faveur des régions ultrapériphériques etc.).

## **2.5. Examen annuel avec l'autorité de gestion**

### **Article 68      Annual examination of programmes**

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

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

*2. After the examination referred to in paragraph 1, the Commission may make comments to the Member State and the Managing Authority, which shall inform the Monitoring Committee thereof. The Member State shall inform the Commission of the action taken in response to those comments.*

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

Given an increased emphasis on strategic nature of the 2007-2013 programmes and increased decentralisation of programme implementation, it seems clear that the Regulation requires the Commission and Member States to examine whether the programmes are being implemented as envisaged and in line with the principle of sound financial management.

#### *2.5.1. Organisation of the annual examination*

The Regulation does not foresee any single model for the annual examination of programmes. Art. 68 of the General Regulation does not make any explicit reference to an annual meeting between Member State and the Commission. It also does not stipulate whether the annual examination is carried out on the initiative of the Commission<sup>38</sup> or the Member State (or the Managing Authority of an operational programme). It also leaves room open whether the annual examination concerns a single operational programme or whether an examination of the groups of programmes is possible. The Regulation gives therefore a certain flexibility as to the way the annual examination is organised.

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<sup>38</sup> Une couverture budgétaire sera à prévoir par la DG responsable pour l'organisation de ces réunions

#### 2.5.1.1. Nature of the annual examination

The annual examination of programmes should be distinguished from other monitoring instruments. The Monitoring Committee meetings are the main meetings between national, regional and local stakeholders including socio-economic partners whereas the Commission's role is only consultative. They deal with direct implementation of programmes. The annual examination, on the other hand, does not necessarily need to involve stakeholders who are directly engaged in programme implementation.

Given the Commission's overall responsibility for implementation of Structural Funds as part of the EU budget, strategic aspects of programming and increased decentralisation of Structural Funds implementation, the Commission shall take an opportunity to use the annual examination of the programmes to focus on the strategic nature of the programme implementation.

#### 2.5.1.2. Form of the annual examination

Given the variety of programmes as regards their number, their size and type and considering different implementing arrangements in each Member State, the annual examination of programmes may take (1) the form of a meeting or (2) the form of a written procedure (exchange of correspondence).

(1) Meeting: in cases where programme implementation faces serious problems or if broader discussion on different issues related to programme implementation is needed, a meeting can be organised either by the Commission (DG REGIO and/or DG EMPL) or by the Member State/the Managing Authority in question. The location of the meeting should be considered on case by case basis. A number of factors should be considered:

- (a) Number of actors involved in the meeting
- (b) Availability of senior Commission officials to attend the meeting where their importance and the agenda requires so.

(2) Written procedure: in case of small programmes or in case there are no major problems in programme implementation, the annual examination may take a form of exchange of letters about the programme implementation in question. The file must contain written record of contacts between the Commission and the Managing Authority.

An opportunity should be used to merge the annual examination of several programmes, especially in the cases where one Managing Authority is responsible for several programmes.

Modern means of communication should be used, (i.e. electronic mail, videoconferences) to cut down costs and save time for all involved.

#### 2.5.2. *Timing of the annual examination*

The Regulation links the annual examination of programmes to the submission of the annual report on implementation (Art. 67 of the General Regulation). Article 68 states that the annual examination of the operational programmes should take place when the annual report on implementation is submitted. The examination may also concern annual control report referred to in Art. 62(1) and the results of the ex-post evaluations of the 2000-06 assistance. The organisation of the examination is thus dependent on the timing of submission of the two annual reports.

Since the annual report on implementation must be formally approved by the Monitoring Committee before it is sent to the Commission, clear procedures should be established concerning coordination of receipt of the annual report on implementation and reactions to it (Article 67) and the annual examination (Article 68).

Article 67(3) and (4) stipulates that the Commission shall inform the Member State within ten working days about the admissibility of the annual report on implementation. The Regulation gives the Commission two months within which it gives an opinion on the content of the admissible report. If the Commission does not respond within the two month limit, the report is considered to be accepted. This means that the annual examination, for which the report is essential, can be held only when the annual report is considered admissible and is accepted by the Commission. In any case, if the annual report is considered unsatisfactory or if further clarification is need on some issues, the annual review meeting gives an opportunity to discuss them.

Consequently, the annual examination takes place in the second half of the year. The following table shows the calendar to be applied to the annual examination of programmes:

	First submission latest by	First examination
Annual report on implementation	30 June 2008	2 <sup>nd</sup> half of 2008
Annual control report	31 December 2008	1 <sup>st</sup> half of 2009
Results of the ex-post evaluation of the 2000-06 assistance	December 2009	2 <sup>nd</sup> half of 2010 (optional)



If the annual report has been submitted considerably after the deadline or only after one or more reminders by the Commission, the latter should put this failure to respect the deadlines on the agenda of the annual examination (see chapter 8 for further details in case of late or lacking submission of the annual report).

### 2.5.3. *Stakeholders in the annual examination and their roles*

Article 68 refers to three stakeholders being involved in the annual examination of the programmes: the Commission, the Managing Authority of the operational programme in question and the Member State concerned. Appropriate arrangements on organisation of the annual examination should be defined between these main actors.

#### 2.5.3.1. Role of the Commission

In cases where a meeting is being organised with the Managing Authority/Member State, DG REGIO and/or EMPL:

- may convoke the meeting;
- organises preparatory meeting with other DGs concerned to draw up the agenda of the meeting, and/or to draw a common position on implementation of programme(s) concerned;
- agrees on the agenda of the meeting with the Managing Authority/Member State;
- may chair the meeting with the Managing Authority/Member State, seeks to reach agreement with the Managing Authority/Member State; other DGs may attend, depending on the agenda;
- draws minutes of the meeting listing the main events of the meeting and actions to be taken by the Commission, the minutes will be circulated for agreement to other DGs that attended the meeting;
- prepares a note to the Member State to inform it about the conclusions the Commission drew from the meeting and/or to make comments on the programme implementation in line with art. 67(4) of the General Regulation;
- monitors follow-up of the comments in co-operation with other DGs in question and makes recommendation for adjustment of the assistance.

In cases where annual examination takes the form of a written procedure, DG REGIO and/or EMPL:

- organises preparatory meeting with other DGs concerned to draw a common position on implementation of programme(s) concerned;
- prepares a note to the Member State to inform it about the conclusions the Commission drew from the annual examination and/or to make comments on the programme implementation in line with art. 67(4) of the General Regulation;
- monitors follow-up of the comments in co-operation with other DGs in question and makes recommendation for adjustment of the assistance.

#### 2.5.3.2. Role of the Managing Authority/Member State

- submits the annual report on programme implementation by 30 June each year (Article 67(1));
- when necessary, may convoke a meeting to discuss implementation of programme(s) under its responsibility, other than the Managing Committee;
- shall respond to comments of the Commission by means of action taken in response to those comments (Article 68(2)); these should be mentioned in a revised version of the annual report or in the next annual report on implementation;
- informs the Monitoring Committee about the results of the annual examination (Article 68(2)).

#### 2.5.4. *Issues subject to annual examination*

The Regulation lays down that the annual examination shall concern the following elements:

- Annual report on implementation: the issues concerned are progress made in implementing the operational programme, the principal results achieved over the previous year, financial implementation and other factors. Financial and physical indicators should be used for the examination/analysis. The weaknesses and/or points for clarification must be raised at the annual meeting and, where appropriate, comments may be made to the Member State and the Managing Authority, which shall inform the Monitoring Committee. The Member State shall inform the Commission of the follow-up of these comments (Article 68(2)).
- Annual control report: the annual examination shall discuss audit findings as well as shortcomings in the management and control systems.
- Ex-post evaluation of the assistance of the 2000-06 programming period (optional): this evaluation is under the Commission's responsibility in collaboration with the Member State and the Managing Authority. The evaluation shall be carried out by an independent assessor. The issue may

be put on the agenda of the annual examination in 2010 to discuss results and impacts of the 2000-06 programmes, lessons learned and links to the implementation of the 2007-2013 programmes.

Although the annual report on implementation is the main basis on which the Commission prepares its position on the annual examination of programmes, other sources of information should be used. These could include:

- for aspects of programme implementation: meetings of the Monitoring Committees, forecasts for payment applications under Article 76(3), ongoing evaluations carried out on different aspects of programme implementation, etc.;
- for strategic aspects: implementation report of the Member State – section on contribution of the operational programmes towards implementing the National Reform Programmes under Article 28, strategic evaluations, etc.

## 2.6. Evaluation

### Article 47      General provisions

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

2.      *Evaluation may be of a strategic nature in order to examine the evolution of a programme or group of programmes in relation to Community and national priorities or of an operational nature in order to support the monitoring of an operational programme. Evaluations 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 13.*

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

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

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

### Article 48      Responsibility of Member States

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

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

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

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

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

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

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

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

#### Article 49      Responsibility of the Commission

1. The Commission may carry out strategic evaluations.

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

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

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

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

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

Ex post evaluation shall be completed by 31 December 2015.

### 2.6.1. *Principales différences par rapport à la période 2000-2006*

The key difference is that a mid-term evaluation and an up-date of it are not obligatory any more. Instead, Member States may carry out a series of on going evaluations, addressing the specific needs of a programme. Ex-ante evaluations may cover several programmes. The establishment of an evaluation plan is recommended for the Convergence objective (see chapter 3 on the OP).

### 2.6.2. *Orientations pour les rapporteurs*

Il convient de tenir compte dans toute la mesure du possible, au cours de la présente période, de l'expérience acquise et des enseignements tirés de la période précédente. À cet égard, l'actualisation de l'évaluation à mi-parcours de la période 2000-2006, pourra fournir des informations utiles au rapporteur.

The following elements form part of the evaluation cycle :

- (1) Ex ante evaluation (in parallel with preparation of the OP)
- (2) Obligatory on going evaluations if
  - the monitoring reveals a significant departure from the goals initially set or
  - proposals are made for the revision of operational programmes,
- (3) Other possible evaluations, preferably based on an ongoing evaluation plan,
- (4) Ex post evaluation (responsibility of the Commission)

Documents de travail l'évaluation :

- Working Paper n° 1 on Ex Ante Evaluation (Annex 1)
- Working paper n° 2 on indicators for monitoring and evaluation: (Annex 2)
- Working paper n° 5 on on-going evaluation (Annex 5)

### **3. LIENS AVEC LA PERIODE DE PROGRAMMATION 2000-2006**

#### **3.1. Overlap concerning Monitoring Committees**

Concerning the overlap of the two programming periods, Article 105(1) of the General Regulation clearly states that Reg. 1260/99 continues to apply to assistance or projects until their closure.

Consequently Monitoring Committees “set up by the Member State, in agreement with the managing authority after consultation with the partners” to supervise “(e)ach Community support framework or single programming document or each operational programme” (Art. 35(1) of Reg. 1260/99) shall continue to fulfil its tasks according to Article 2(3).

In the case of discontinuity between the number or coverage of Committees, the Member State may propose to combine Committee meetings between the two programming periods, but may not decide to dissolve existing Committees. Any decision to avoid unnecessary overlap may only be taken in the framework of partnership, “in agreement with the managing authority” and after consultation of the Commission, being member “in an advisory capacity” of these Committees.

As a result the agenda of a 2007-2013 Monitoring Committee for a Convergence region may cover agenda points concerning the 2000-2006 period, where the Commission’s representative has a different role than for agenda points concerning the 2007-2013 period. This distinction has to be made clear in the internal rules of the Monitoring Committee (for the period 2007-2013) and in the agenda.

On the other hand, it will not be possible that a 2007-2013 Monitoring Committee for an objective 2 programme covering the whole of a given Member State covers 2000-2006 agenda points, when for the current period each region of that Member State had its own Monitoring Committee.

Practical solutions respecting legal requirements have to be found Member State by Member State, taking into account the fact that – contrary to the period 1994-1999 – the managing Authority still can approve projects until 2008, provided expenditure for those projects will be spent before the 31 December 2008. Consequently the whole management system including the expenditure certification has to be maintained.

In case the architecture will mostly stay as it stands, the system covering both programming periods might be overburdened, especially in Member States whose contribution from the Funds will considerably rise for the 2007-2013 period. Commission services may pay particular attention to that problem.

#### **3.2. Overlap concerning Annual Reports**

Again, Article 105(1) of the General Regulation clearly states that Reg. 1260/99 continues to apply to assistance or projects until their closure. According to Article 37(1) of Reg. 1260/99 annual reports concerning the 2000-2006 period are due “within six months of the end of each full calendar year of implementation”. Monitoring Committees set up to supervise these programmes (see chapter 7.1.

concerning the overlap of MC's) will continue to approve the reports (Art. 35(3)(e) of Reg.1260/99) covering the years 2006 until 2008. According to point 3.3.6 and 3.3.7 of the Commission's "Guidelines on closure of assistance (2000-2006) from the Structural Funds", the annual report concerning 2008 may constitute a "separate section" of the final report. Art. 37(2) of that Regulation defines the content of these annual reports. Commission services cannot cede on the points to be covered by these reports. However, the details of each section will be proportionate to what happened in the year covered.

Concerning the **final report**, specific rules are outlined in the Commission's "Guidelines on closure of assistance (2000-2006) from the Structural Funds" (section 4.2). This report will be approved by the respective 2000-2006 Monitoring Committee.

In the case of joint Committees covering both programming periods, the Committee – as Monitoring Committee covering the programme 2000-2006 - will approve the annual reports 2006-2008 according to Art. 37 of Regulation 1260/99, and - as Monitoring Committee covering the programme 2007-2013 - will approve the annual reports 2007-2013 according to the rules set out in the new General Regulation. This distinction has to be made clear in the internal rules of the Monitoring Committee (for the period 2007-2013) and in the agenda.

In the case of on-going 2000-2006 Committees, they just continue to supervise the 2000-2006 programmes.

En ce qui concerne les **rapports annuels de contrôle**, les Etats membres doivent communiquer les rapports relatifs à la période de programmation 2000-2006 les 30 juin 2007, 2008, 2009 et le rapport final avec la déclaration de clôture (Art. 13 du R. (CE) n° 438/2001). Les rapports concernant l'année 2007 et, en cas de rapport séparé du rapport final, l'année 2008 peuvent constituer une annexe séparée du rapport annuel de mise en œuvre (point 4.1 de la Communication de la Commission sur la simplification; C(2003)1255 du 25 avril 2003).

Les rapports annuels de contrôle relatifs à la période 2007 -2013 doivent être communiqués, par l'autorité d'audit, les 31 décembre de chaque année, à partir de 2008 et jusqu'à 2015, et le rapport final sera transmis avec la déclaration finale de clôture (Article 62(1)(e) du Règlement Général).

### **3.3. Overlap concerning annual review**

As for the overlap concerning annual reports (see chapter 7.2), starting with 2008 there will be an overlap of two annual review procedures covering a given year under the 2000-2006 period and the same year under the 2007-2013 period. Good co-ordination of the two reviews has to be assured by the Commission services, in co-operation with the Managing Authority.

Subject of the review concerning the 2000-2006 period are “the main outcomes of the previous year” (Article 34(2), 1st sub-paragraph, of Reg. 1260/99), whereas Art. 68 of the new General Regulation concerning the 2007-2013 period talks about the “the principal results achieved over the previous year”. Recommendations concerning the 2000-2006 period may aim at “improving the effectiveness of the monitoring or management arrangements” (Article 34(2), 2nd sub-paragraph, of Reg. 1260/99),

whereas – for the 2007-2013 period - “any aspects of the operation of the management and control system ... may also be examined”. As a result, both reviews cover grosso modo the same issues and may follow the rules set out in chapter 4. However, concerning the 2000-2006 period, possible arrangements concerning the annual review defined “by agreement with the Member State and the Managing Authority” (Article 34(2), 1st sub-paragraph, of Reg. 1260/99), have to be taken into account.



# **The "European Grouping of Territorial Co-operation"**

## **1. INTRODUCTION**

The Regulation establishing the "European Grouping of Territorial Co-operation" (EGTC) forms part of the whole legislative package for Structural Funds. It creates a new management tool, especially, but not at all exclusively, for the "European Territorial Co-operation" objective. The legal base being Article 159 of the Treaty, the Regulation is linked to the Cohesion Title of the Treaty, but this Article allows for "specific actions outside the Funds", in order to achieve the objective of social and economic cohesion.

Below the different ways of making use of the instrument in Structural Funds programmes will be set out. Next to the "European Economic Interest Group", the "European Society" and the "European Cooperative", the EGTC is the 4<sup>th</sup> instrument established under EU law. As Regulations "shall be binding in its entirety and directly applicable in all Member States", the instrument may need some implementing rules on the level of the Member States, but does not need any further ratification by the national legislations or bi-/multilateral agreements between Member States.

The objective of the instrument shall be to facilitate and promote economic or social actions of cross-border, trans-national and inter-regional co-operation ("territorial co-operation") with the aim of strengthening economic and social cohesion.

The idea behind is to prevent any form of discrimination: in so far as whenever two local authorities may set up a joint body for a common purpose (infrastructure or public service) within the same Member State, they may do so as well together with an authority across the border.

## **2. GENERAL ISSUES**

### **2.1. Members of an EGTC**

Regional and local authorities as well as other bodies under public law may set up a "European Grouping of Territorial Co-operation" under the Regulation installing - under EU law - this new instrument with legal personality.

### **2.2. Setting-up of an EGTC**

The participation of the local/regional authorities will be controlled ex ante by the Member States according to their national framework. The Commission will only learn about an EGTC once it has been set up and its statutes have been registered and published in the Member State where it will have its registered office. A Notice concerning the key elements of a new EGTC shall be published in the Official Journal of the European Union.

### **2.3. Legal personality of an EGTC**

An EGTC shall have legal personality and have in each Member State the most extensive legal capacity accorded to legal persons. Consequently, an EGTC could be an "intermediate body" in the sense of Article 2(6) of the General Regulation and be entrusted the management of a part of an operational programme (Art. 42 of the General Regulation), especially when interregional cooperation is organised as a specific priority axis of "Convergence" or "Regional Competitiveness and Employment" Objective or an ESF-programme. This possibility is independent from the question, whether this would fall under the 1st or 2nd of the above-mentioned cases (either defining "programmes" as "programmes or parts of programmes" or defining "projects" as "projects or groups of projects").

### **2.4. National implementing rules**

The Regulation will enter into force together with the whole Cohesion package around 21 July 2006. Then the Member States have up to one year to adopt national implementing rules (designate competent bodies to control the setting up of an EGTC, identify the national law applicable to EGTC registered in their territory, designate/create a national register etc.). By 21 July 2007 at the latest everything should be in place to register the first EGTCs.

## **3. TASKS THAT CAN BE DELEGATED TO AN EGTC**

### **3.1. Overview**

According to Article 7(3) of the Regulation the scope of this new legal instrument on Community level covers the following possibilities:

- (a) primarily "the implementation of territorial cooperation programmes (...) co-financed by ERDF [, ESF and/or the Cohesion Fund]" or
- (b) "the implementation of territorial cooperation (...) projects co-financed by ERDF, ESF and/or the Cohesion Fund";
- (c) realization of "other specific actions of territorial co-operation between its members in pursuit of the objective referred to in Article 1(2) [facilitate cross-border, transnational and/or interregional cooperation with the exclusive aim of strengthening economic and social cohesion] with (...) a financial contribution from the Community"; and
- (d) realization of "other specific actions of territorial co-operation between its members in pursuit of the objective referred to in Article 1(2) [facilitate cross-border, transnational and/or interregional cooperation with the exclusive aim of strengthening economic and social cohesion] (...) without a financial contribution from the Community".

### **3.2. Tasks of an EGTC within the "European Territorial Co-operation" objective**

The 1st possibility concerns only programmes under the "European Territorial Cooperation" Objective, co-financed by the ERDF. In this case the EGTC will function as the Managing Authority of such a programme as foreseen in Article 18 of the ERDF Regulation.

The 2nd possibility concerns mostly projects co-financed under the "European Territorial Cooperation" Objective programmes.

### **3.3. Tasks of an EGTC under Structural funds in general (outside the "European Territorial Co-operation" objective)**

However, all co-operation projects co-financed by ERDF, ESF and/or the Cohesion Fund are covered. This means projects of interregional cooperation within programmes under the "Convergence" and "Territorial Competitiveness and Employment" Objectives (Art. 37(6)(b) of the General Regulation) and/or the specific priority axes for interregional/transnational cooperation in ESF programmes. Finally it is not excluded that a Cohesion Fund project in a border region such as a water treatment plant is managed by an EGTC joining members from the Member State where the project will be built and from the Member State that will profit from that project (e.g. waste water led into a cross-border river).

Under the "Convergence" and the "Regional Competitiveness and Employment" objectives, the EGTC could be the beneficiary of actions covered by the specific priority axes for inter-regional co-operation (ERDF) or for trans-national/inter-regional co-operation in the meaning of the ESF-Regulation.

Even for infrastructure projects outside the specific inter-regional co-operation priority axes, partners could decide to run jointly such an infrastructure supported out of a "normal" priority axis of one of the two Member States. (E.g. partners in Austria and Hungary could set up a joint infrastructure for health or technology transfer in Hungary, receiving aid only under the Objective 1 programme for Hungary).

Furthermore, the Managing Authority could decide to entrust the management and implementation of such a co-operation priority axis to an EGTC, in accordance with the provisions concerning global grants (Article 42 of the general Regulation; for further details see chapter 5) or just to entrust to an EGTC to carry out duties on behalf of the Managing or Certifying Authority acting as intermediate body in the meaning of Article 2(6).

One problem concerning the setting-up of a specific priority axis for inter-regional co-operation will be to assure that such action is covered by the programme in a given region in Member State A, indicating the wish to cooperate with a given region in Member State B, will be reflected in the programme of that region in Member State B. If this was not the case (the programme of the region in Member State B does not include such co-operation actions), an EGTC could still bring together partners from both regions, pooling ERDF support for the region in Member State A and purely national funds for the region in Member State B.

### **3.4. Tasks of an EGTC outside structural funds**

The 3rd possibility is of less interest for DG REGIO, as co-operation actions with a financial contribution from the Community aims at those programmes/projects/actions co-financed by the budget of other Directorates General such as the 7th Framework Programme for Research, the Competitiveness and Innovation Framework Programme (CIP) of DG Enterprise or DG Education and Culture programmes.

Finally, the 4th possibility could become of interest for DG REGIO in the middle-term run or after 2015 at the latest when EGTC-run projects co-financed by the Structural Funds/Cohesion Fund will not be co-financed any longer. It is obvious that infrastructures or services managed by an EGTC will not have to be closed down after the period of co-funding. It is true that Member States are allowed to limit the tasks that EGTCs may carry out without a Community financial contribution (Article 7(3), third subparagraph), but this limitation could be countered by a quite large demarcation line. The tasks of EGTCs operating without a Community financial contribution must at least include the cooperation actions listed under Article 6 of the ERDF Regulation, i.e. what would be eligible under the "European Territorial Cooperation" Objective. By this formulation the continuation of EGTCs running projects co-financed by the Community can continue, even when they get no more co-funding.

# **CHAPTER 8: ANNUAL IMPLEMENTATION REPORT**

## **1. SUMMARY OF THE MAIN ELEMENTS**

This chapter describes the provisions related to the annual report set out in the General Regulation, Implementing Regulation and in n Annex XVIII of the Implementing Regulation. The annual reports must follow a clear logic. The annual report should be delivered in time, give concise information on its programme and make use of the monitoring tools agreed. The indicators fixed for each programme are of utmost importance.

Annex XVIII of the Commission Implementing Regulation outlines the minimum content of the annual report. The proposed structure of a report follows the logic that qualitative analysis of the main achievements must be well anchored in facts and evidences and measured by the physical and financial indicators. In order to ensure such a clear link it is proposed that a report starts with sections providing concise information on physical and financial indicators and their progress and establish all relevant facts and data. Only when the facts are established the qualitative analysis of the progress should follow in the subsequent sections of the report. Such logic is repeated for an operational programme as a whole and for each of its priorities.

The checklist attached to this Chapter helps desk-officers to determine the admissibility and satisfactory nature of a report.

The main monitoring tools are quantified indicators, to be presented in tables.

The information provided in the annual implementation reports will also facilitate strategic reporting (for details on strategic reporting please see Chapter 2).

## 2. EXTRACT OF LEGAL PROVISIONS FROM THE COUNCIL AND COMMISSION REGULATION

- Articles concerned: Council Regulation laying down general provisions on the ERDF, ESF and the CF; 9, 34, 50, 57, 65, 67, 68, 86
- ESF Regulation: 4, 10
- Commission Regulation on implementation of the General Council Regulation: Article 11, Annex XVIII

While all enumerated above legal provisions must be taken into account when determining the content of the annual implementation report and relating procedures the following articles include direct provisions:

### Article 67 of General Regulation

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

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

a) *the progress made in implementing the operational programme and priorities axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 36 (1)(c) at the level of the priority axis;*

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

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

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

*the expenditure paid out by the body responsible for making payments to the beneficiaries*

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

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

d) *the steps taken by the Managing Authority or the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:*

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

- ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken, including the response to comments made under Article 68(2) where appropriate;
- iii) the use made of technical assistance;
- e) the measures taken to provide information on and publicise the operational programme;
- f) information about significant problems relating to the compliance with community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them;
- g) where appropriate, the progress and financing of major projects;
- h) the use made of assistance released following cancellation as referred in Article 98(2) to the Managing Authority or to another public authority during the period of implementation of the operational programme.
- i) cases where substantial modification has been detected under Article 57.

*The breadth of information transmitted to the Commission shall be proportional to the total amount of expenditure of the operational programme concerned. Such information may be provided in summary form.*

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

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

*The annual and final implementation reports referred to in Article 67 of Regulation (EC) No 1083/2006 laying down general provisions on the Structural Funds and the Cohesion Fund, shall contain, where appropriate, a synthesis of the implementation of:*

- (a) *gender mainstreaming as well as of any gender specific action;*
- (b) *action to increase participation of migrants in employment and thereby strengthen their social integration;*
- (c) *action to strengthen integration in employment and thereby improve the social inclusion of minorities;*
- (d) *action to strengthen integration in employment and social inclusion of other disadvantaged groups, including people with disabilities;*

- (e) innovative activities, including a presentation of the themes, their results and of their dissemination and mainstreaming;*
- (f) trans-national and/or inter-regional actions.*

**Article 11(2) of the Implementing Regulation**

- 2. The annual implementation report referred to in Article 67 of Regulation (EC) No 1083/2006 shall contain updated information, at operational programme level, on the cumulative allocation of the Funds by categories as from the start of the operational programme, specifying the contribution of the Member State to the targets set out in Article 9(3) of Regulation (EC) No 1083/2006 presented for each combination of codes, in accordance with parts A and C of Annexe II.*
- 3. The data provided by Member States pursuant to this Article shall be used by the Commission only for information purposes.*



### **3. GUIDELINES FOR THE DESK OFFICER**

#### **3.1. Purpose of the annual report**

The annual report is a key document in the management of the new Structural Funds programmes. It is central to the process of reviewing programme performance between the Commission and managing authorities and it provides Monitoring Committees with the opportunity to take stock of their programmes each year. It is also the main source of information providing a basis for effective discussion between the managing authority and the Commission during the annual review. The annual report is also one of the preconditions for interim payments by the Commission.

#### **3.2. Submission of the reports by the Member State**

The Managing Authority must submit an implementation report to the Commission for the first time in 2008 and afterwards within six months of the end of each full calendar year of implementation (Article 67(1) of the General Regulation). The final report (including the 2015 report) must be submitted to the Commission by 31 March 2017. The reports must be submitted electronically (Article 66(3) of the General Regulation).

#### **3.3. Procedural steps**

The Commission will handle the report as follows:

##### *3.3.1. Admissibility Check*

On receipt the DG “chef de file” will check whether the report is admissible having regard to the elements listed in Article 67(2) of the General Regulation and, for the ESF programmes, to the requirements of Article 10 of the ESF Regulation.

Article 67 (2) must be interpreted strictly (see checklist which indicates clearly which elements of the annual implementation report are covered by the test on admissibility). The DG "chef de file" is the sole responsible DG at this moment. By official acknowledgement of receipt (information will be provided via SFC 2007 by the Head of Unit) addressed to the Managing Authority within ten working days from the date of its receipt the Commission will state whether or not the report is admissible and if not what elements are missing (Article 67(3) of the General Regulation). In case the annual implementation report is not admissible the information provided via SFC 2007 to the Managing Authority must stipulate the consequences of non admissibility of the report i.e. that no interim payments can be made.

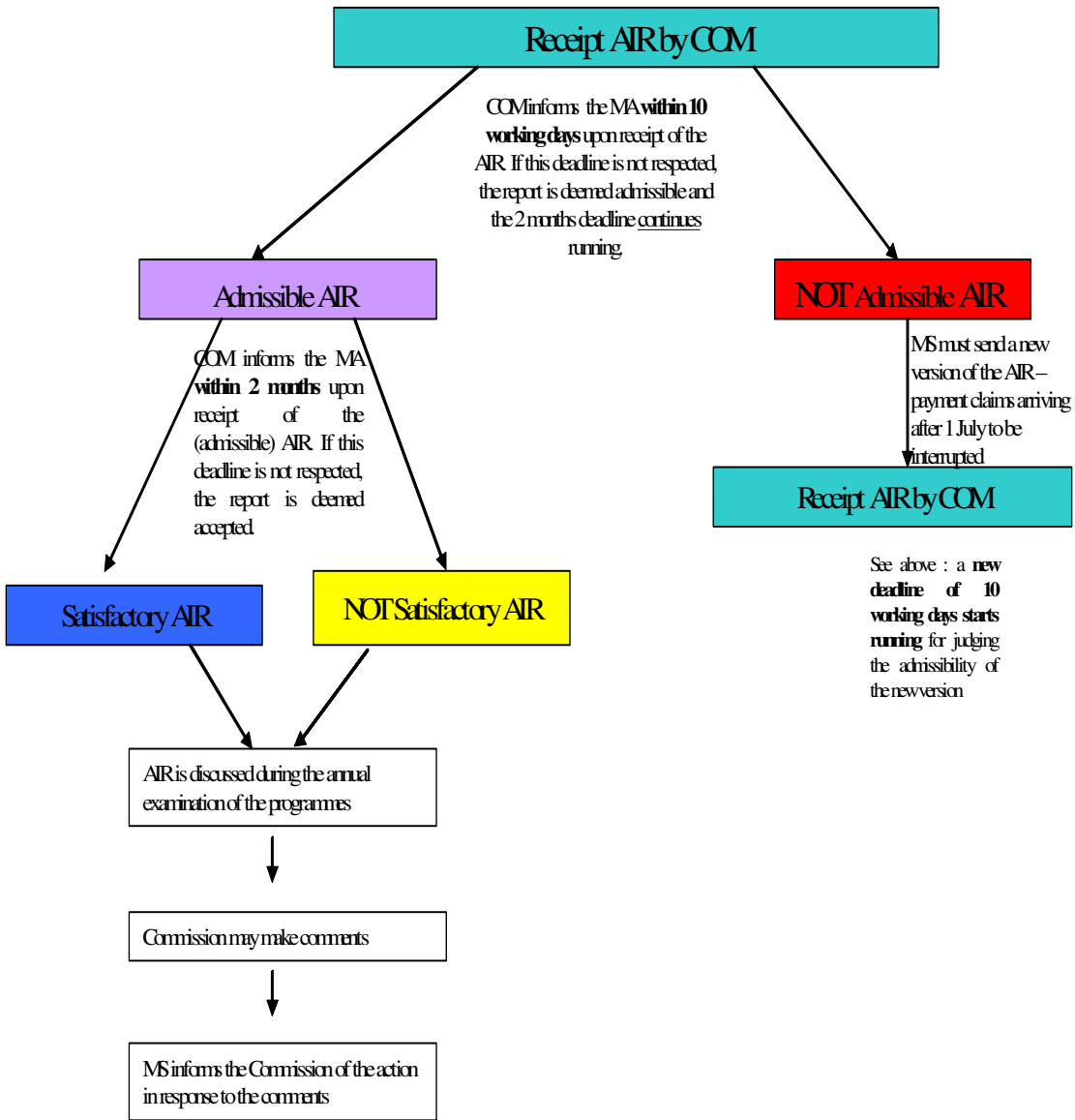
##### *3.3.2. Quality check*

- If the report is judged admissible [explicitly, or tacitly if the 10 working days for examining the admissibility of the report have passed without any reaction from the Commission] the desk

officer will proceed to full analysis of the report. A reply whether or not the admissible report is satisfactory should be sent to the Managing Authority within two months of receiving the admissible report. For example if, from the outset, a Managing Authority submits a report which is judged admissible by the Commission, the full period for analysing it will be 2 months upon receipt of the report and not 10 working days + 2 months. In the case of the final report the delay is five months (Article 67 (4) of the General Regulation).

The responsible DG has to consult DGs concerned according to the scope of the programme. In case use of Article 34 of the General Regulation is made (i.e. use of the flexibility facility between ERDF and ESF or joint assistance from the Cohesion Fund and the ERDF for OPs on transport infrastructure and the environment, including for major projects), the concerned DG has to be consulted.

- If the Commission does not react within two months (or five months in the case of the final report) from the date of receipt of an admissible report, the report is deemed to be accepted (Article 67 (4) of the General Regulation).
- If the report is unsatisfactory or the Commission takes the view that some elements could be gone into further detail or merit discussion, the information provided via SFC 2007 to the Managing Authority should point out the weaknesses and/or list the points to be discussed or amplified.
- The weaknesses and/or points for clarification must be raised during the annual examination and, where appropriate, comments may be made to the Member State and the Managing Authority, which must inform the Monitoring Committee. The Member State must inform the Commission of the follow-up on these comments (Article. 68 (2) of the General Regulation). (see chapter 7 on details on annual examination).



### **3.4. Financial implications**

The most important consequences of the analysis of the annual report relate to the interim payments:

- If the implementation report of year N-1 is admissible, requests for interim payment sent to the Commission after 30 June of year N will be acceptable as long as the other requirements laid down in Article 86 (1) of the General Regulation are met.
- If the report is judged inadmissible or no report has been sent, interim payment requests to the Commission made after 30 June cannot be accepted and no interim payments can be made until an admissible annual report is presented. As mentioned above this consequence must be clearly indicated in the information provided via SFC 2007 to the Managing Authority informing it that the report is inadmissible.
- A report which is admissible but considered unsatisfactory following a full review of its content cannot lead to the inadmissibility of an interim payment claim (Article 86(1)c of the General Regulation). Payments should be made provided the other regulatory conditions laid down in Article 86(1) of the General Regulation have been met.

### **3.5. The content of the Annual Implementation Report**

The Member States are responsible in the first instance for the implementation of the programmes and control of assistance. The annual implementation report must accordingly include information demonstrating the progress made and steps taken to ensure quality and effectiveness of the implementation (Article 67.2 of General Regulation). It should be underlined, that in order to ensure respect of the community law this information shall take account of any significant problems relating to the compliance with community law which have been encountered during the implementation of an operational programme and measures undertaken to deal with them (Article. 67(2)(f) of General Regulation).

On the basis of the respective provisions of the General Regulation and in particular of Article 67 (2), which identifies the requirements as regards the content of the annual implementation report, as well as on the basis of Article 10 of the ESF Regulation, which identifies additional requirements relating to annual reports of ESF programmes, a common format for the annual implementation report has been adopted and is defined in Annex XVIII of the Implementing Regulation.

The attached checklist is based on the relevant provisions of the General Regulation and Annex XVIII of the Implementing Regulation. Its aim is to facilitate the analysis of the annual implementation report and the taking of a decision on its admissibility and its quality. For each section, it gives the legal basis, the content that should be covered and, where appropriate, some comments. The expression "not applicable" is given where a particular item is

not a criterion for deciding the admissibility of the report but is still relevant to judge as to the quality of the report.

Whereas the checklist presents a detailed list of all the elements that should appear in the annual implementation report, it is worth to underline a number of aspects which require particular attention:

- Programmes contribution to the achievement of Lisbon objectives – this requirement follows the logic of the strengthened strategic approaches which constitutes one of the key changes in the new programming period. Desk Officer should check that the electronic transmission of ex-post information on Lisbon reporting has indeed taken place. In particular, the reports should include information on the progress made in achieving targets of Lisbon earmarked categories as set out in the OP and the total contribution of the Funds as from the beginning of the programme implementation to the categories of expenditure in Annex IV of the General Regulation and, if applicable, to the categories identified in accordance with Article 9(3), second indent of the General Regulation.
- For the relevant programmes, and in particular ESF programmes, the annual reports should present how the interventions underpin the implementation of the European Employment Strategy and the employment related objectives in the field of social inclusion, education and training;
- The information provided in the annual implementation reports will also facilitate the preparation of the strategic reports (for details on strategic reporting please see Chapter 2).
- The qualitative and results oriented analysis which should highlight relations between the physical and financial progress and the achievement of targets and expected results;
- The information required by Article 57 of the General Regulation on any substantial modification of the operations (i) affecting its nature, implementation conditions or giving to a firm or a public body an undue advantage or (ii) resulting either from change in the nature of ownership or cessation of a productive activity. If such modifications occur within five years from the completion of the operation (or three years in specific cases) the Member State or Managing Authority should recover sums unduly paid. Moreover, the Member State or Managing Authority - acting together with the Commission - must ensure that undertakings which are subject to the recovery of payments and which transfer its productive activity within a Member State or towards another Member State do not benefit from a contribution from the Funds. The Commission must also inform other Member States of modifications under Article 57.
- The use of the flexibility facility given by Article 34. The information provided on priority level should in particular allow for verification whether (1) the investments fall within the scope of assistance from the other Fund and whether they are (2) necessary for the satisfactory implementation of the project (or group of projects) financed under that

priority axis and (3) directly linked to it. This monitoring will facilitate respect of the thresholds and in consequence should allow to avoid financial corrections which must be carried out at the closure of a programme in case the thresholds are exceeded. For more details on flexibility facility see Chapter 7.

- The annual implementation report for OP providing assistance to the outermost regions should include the breakdown between investment and operating costs.
- Complementarity of actions with other instruments, such as EAFRD, EFF, EIB and EIF. In particular the report should provide information on implementation arrangements ensuring demarcation and co-ordination of assistance financed by different financial instruments.
- If applicable, the report should describe the use of the JEREMIE and JESSICA initiatives within relevant priority axes. In particular, the report should provide information on holding funds (or urban development funds in case of JESSICA) selected by the managing authority and amounts contributed from the operational programme to such funds.
- For the ESF programmes the information required by Article 10 of the ESF Regulation.
- For multiobjective programmes the information provided should allow for the verification of the financing mechanism based on the pro-rata allocation among objectives.
- For monitoring of special allocations, in the final report the Commission will need assurance that the special allocations have been allocated to the areas concerned over the course of the programming period.

#### **4. THE KEY DIFFERENCES COMPARED TO THE 2000-06 PROGRAMME PERIOD**

- The report should clearly present the contribution of the programme to the EU policies such as the Lisbon process and the European Employment Strategy including its contribution to the achievement of the targets of cohesion spending on Lisbon objectives based on earmarked categories. This information will also facilitate strategic reporting.
- The report shall include information about significant problems encountered with the compliance with community law together with measures undertaken to deal with them.
- Report must be provided electronically
- Indicators to be monitored as the main tool for following the progress of programmes
- Information on the use of the flexibility given in Article 34 of the General Regulation.
- Information on any substantial modifications of operations in line with Article 57 of the General Regulation.
- Great importance of the demonstration of complementarity with other EU instruments.
- No possibility for making recommendations, but only comments, in the case of an unsatisfactory report.

## Checklist for the annual implementation report

Legal basis	Article	Subject	Description	Admissibility (Yes/No)	Satisfactory (Yes/No)	Qualitative assessment / comments
<b>1 Identification data</b>						
SF reg	Art 65(d)	Monitoring Committee approval	Confirmation/date			
IR	Annex XVIII	Programme data	Structural fund objective, Region concerned, Programming period, Programme number, Programme title	-		
<b>2. Overview at OP level</b>						
<b>2.1 Achievements and analysis at OP level</b>						
<b><i>Information on the physical progress of OP implementation</i></b>						
SF reg	Art 67(2)(a)	Progress in the implementation of the operational programme	in relation to its specific, verifiable targets			If the figures are not available the report ought to state when they will be.
<b><i>Financial information</i></b>						
SF reg	Art 67(2)(b)	Financial implementation of the operational programme detailing	the expenditure paid out by the beneficiary included in payment claims sent to the managing authority			The information required under Art 67(2)(b) is best presented in the form of a summary table, for the reporting year and cumulatively as from the start of the programme. It may be completed by information on financial engineering techniques implemented under the measures of assistance. <u>It provides a</u>



		the corresponding public contribution			<u>comparison between effective financial execution and financial forecasts (In cases of divergence, description of the corrective measures envisaged).</u>
		the total payments received from the Commission			
		the financial indicators (Art 65(2))			
		the expenditure paid out by the body responsible for making payments to the beneficiaries			
Art 67(2)(b)	Financial implementation of the operational programme in areas receiving transitional support shall be presented separately	the expenditure paid out by the beneficiary included in payment claims sent to the managing authority			
		the corresponding public contribution			
		the total payments received from the Commission			
		the financial indicators (Art 66(2))			
		the expenditure paid out by the body responsible for making payments to the beneficiaries			

<b>Information about the breakdown of use of the funds</b>						
SF reg	Art 9(3)	Targeting on EU priorities of promoting competitiveness and creating jobs	The targets based on the categories of expenditure in Annex IV shall apply as an average over the entire programming period	<u>not applicable</u>		optional for the MS which acceded on or after 1 May 2004.
	Art 67(2)(c)	indicative breakdown of the allocation of funds by categories	in accordance with the implementation rules adopted by the Commission			see also IR Art 11.2 and Annex II Part c
IR	Art.11(2)	updated information on the cumulative allocations of funds by categories specifying the contribution of MS to the targets set out in Art. 9(3)				information on progress made in achieving targets of Lisbon earmarked categories
<b>Assistance by target group</b>						
IR	Annex XXII			<u>not applicable</u>		
<b>Assistance repaid or re-used</b>						
SF reg	Art 67(2)(h)	the use made of assistance released	The use made of assistance released following cancellation as referred to in Art 99(2)			Only needed if there is a significant modification since the previous reporting period.
SF reg	Art 67(2)(i)	durability of operation	substantial modification under Art 57			

<b>Qualitative analysis</b>						
ESF Reg	Art 10	The annual and final implementation reports shall contain, when appropriate, a synthesis of the implementation of	Gender mainstreaming as well as any other gender specific action	-		
			Action to increase migrants' participation in employment and thereby strengthen their social integration	-		
			Action to strengthen integration in employment and thereby improve the social inclusion of minorities	-		
			Action to strengthen integration in employment and thereby improve the social inclusion of other disadvantaged people, including people with disabilities	-		
			Innovative activities, including a presentation of the themes, their results and of their dissemination and mainstreaming	-		
			Trans-national and/or inter-regional actions	-		

SF reg	Art 11 (2)	Partnership	the partnership shall cover the preparation, implementation, monitoring and evaluation of the operation programmes.	<u>not applicable</u>		Refer to the whole of Art 10. National rules and practices in this matter will be differing.
SF reg	Art 16	Equal opportunities	The Member States (and the Commission) shall ensure that equality between men and women and the integration of gender perspective is promoted and that the principle of non-discrimination is respected, with special regard to accessibility for people with disabilities, during the various stages of implementing the funds.	<u>not applicable</u>		
IR	Annex XVIII			<u>not applicable</u>		This should cover: a) an interpretation of the financial indicators in relation to the physical achievements, including a qualitative analysis on the progress achieved in relating to the aims set out initially; b) a comparison between the results of the priorities on the ground in relation to the ex-ante forecast. A particular attention should be given to the contribution of the OP to the Lisbon process including its contribution to the targets specified in Art 9 (3) of the General Regulation
<b>2.2 Information about compliance with Community law</b>				-		

SF reg	Art 67(2)(f)	Compliance with Community law	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 them			
<b>2.3 Significant problems</b>				-		
SF reg	Art 67(2)(d)(ii)	Steps taken by the Managing Authority or the Monitoring Committee to ensure the quality and effectiveness of the implementation	A summary of any significant problem encountered in implementing the operational programme and any measure taken, including the response to comments made under Art 68(2) where appropriate			<p>This is only needed if there is a significant modification since the previous reporting period.</p> <p>This ought to cover not only quantitative and qualitative aspects directly linked to the implementation of the assistance, but also elements which, without stemming directly from the assistance, have a direct impact on its implementation (i.e. legislative changes or unexpected socio-economic developments). For ESF funded programmes, the information shall highlight any significant problem encountered in implementing the actions and activities under Art 10 of the ESF regulation.</p>
<b>2.4 Implementation context</b>						
IR	Annex XVIII			<u>not applicable</u>		If relevant only, any elements which without stemming directly from the assistance have a direct impact on the programme's implementation (for instance legislative changes or unexpected socio-economic developments).

<b>2.5 Substantial modifications under Article 56</b>				-		
SF reg	Art 67(2)(i)	durability of operation	substantial modification under Art 57			Only needed if there is a significant modification since the previous reporting period.
<b>2.6 Complementarity with other instruments</b>				-		
SF reg	Art 9(4)	Complementarity and coordination	Co-ordination between the assistance from the different funds, the EAFRD, the EFF, and the interventions of the EIB and of other existing financial instruments	<u>not applicable</u>		A description of the arrangements made ensuring the demarcation and coordination between these instruments.
<b>2.7 Monitoring arrangements</b>				-		
SF reg	Art 67(2)(d)(i)	Steps taken to ensure the quality and effectiveness of the implementation	Monitoring and evaluation measures, including data collection arrangements			Only needed if there is a significant modification since the previous reporting period.
<b>2.8 Performance reserve</b>						
SF reg	Art 50	National performance reserve	Performance relative to the selected priority axis of each operational programme on the basis of a limited number of indicators (maximum 5) included in the approved OP.			Where the Member State has decided to establish a performance reserve and for the year 2010 only.
<b>3 Implementation at priority level</b>						

<b>3.n Priority n</b>						
<b>3.n.1 Achievements/analysis priority</b>						
<b>Information on physical and financial progress of the priority implementation</b>						
SF reg	Art 67(2)(a)	Progress implementation of the priority	in relation to its specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, the indicators referred to in Article 36(1)(c )			If the figures are not available the report ought to state when they will be.
<b>Qualitative analysis</b>						
IR	Annex XVIII			<u>not applicable</u>		This should cover: a) an interpretation of the financial indicators in relation to the physical achievements, including a qualitative analysis on the progress achieved in relating to the aims set out initially; b) a comparison between the results of the priorities on the ground in relation to the ex-ante forecast.
<b>3.n.2 Significant problems</b>						

SF reg	Art 67(2)(d)(ii)	Steps taken by the Managing Authority or the Monitoring Committee to ensure the quality and effectiveness of the implementation	A summary of any significant problem encountered in implementing the operational programme and any measure taken, including the response to comments made under Art 67(2) where appropriate			This is only needed if there is a significant modification since the previous reporting period.  This ought to cover not only quantitative and qualitative aspects directly linked to the implementation of the assistance, but also elements which, without stemming directly from the assistance, have a direct impact on its implementation (i.e. legislative changes or unexpected socio-economic developments)
<b>4 Coherence and concentration (ESF programmes) / major projects (ERDF)</b>						
<b>4 ERDF programmes</b>						
SF reg	Art 67(2)(g)	Major projects <u>(ERDF)</u>	Progress and financing			This is only needed if there is a significant modification since the previous reporting period.
<b>4 ESF programmes</b>						
ESF Reg	Art 4(1)	Coherence and concentration	A description of how the ESF actions contribute to implementation of the employment recommendations and of the employment related objectives of the Community in the field of social inclusion, education and training.	<u>not applicable</u>		
<b>5 Technical assistance</b>						
-						



SF reg	Art 67(2)(d)(ii i)	Steps taken to ensure the quality and effectiveness of the implementation	The use made of technical assistance			<p>This is only needed if there is a significant modification since the previous reporting period.</p> <p>It is recommended to make the distinction between:  a) activities undertaken for the management, implementation, follow-up and control (subject to ceilings according xxx); and  b) other activities (evaluation, publicity, studies and conferences) for which the Regulation does not define ceilings</p>
	Art 46	Technical assistance	Activities to reinforce the administrative capacity for implementing the Funds are subject to limits (total amount in respect of each OP subject to the following limit: 4% for the "Convergence" and the "Regional Competitiveness and employment" objectives and 6% for the "European Territorial" objective).	<u>not applicable</u>		The limits apply to the entire programming period only.
<b>6 Publicity and information</b>						
SF reg	Art 67(2)(e)	Information and publicity	Measures taken to provide information on and publicise the operational programme			<p>This is only needed if there is a significant modification since the previous reporting period.</p> <p>Stressing any action undertaken both for potential final beneficiaries and for the general public.</p>

# CHAPTER 9: EUROPEAN TERRITORIAL CO-OPERATION

## 1. SUMMARY OF THE MAIN ELEMENTS

This chapter sets out specific information relating to the preparation and implementation of Operational Programmes under the European Territorial Co-operation Objective (hereafter “Co-operation Objective”). The Co-operation objective will be financed by the ERDF only. Information about the ESF financing of transnational and interregional actions is dealt with in Chapter 3.

This chapter is required because of the specific nature of multi-country programmes and because there is a substantial number of Co-operation Objective-specific references in the new regulations, especially in the ERDF regulation.

Furthermore, there will be 3 types of programme within the Co-operation Objective: cross-border, transnational and interregional co-operation programmes. Each of these types of programme also has specificities which must be addressed in order to assist the desk officer during the negotiation phase.

“Transnational co-operation” in the context of the Co-operation Objective refers to the wider, strategic co-operation supported previously by the ERDF under INTERREG IIC and INTERREG IIIB. It is important to differentiate this from transnational co-operation as meant in the context of the ESF, which concerns co-operation between Member State partners without any geographic limit.

Notwithstanding the above, the broad framework of a Co-operation Objective programme should follow the outline of the Operational Programmes, as described in Chapter 3 of this aide-mémoire.

## **2. GUIDELINES FOR DESK OFFICERS**

### **2.1. Programme Preparation Phase**

For all Co-operation Objective programmes, the Commission recommends that a programme task force should be established. This body will have the responsibility for steering the programme preparation phase. It should have members from all participating countries (including non-Member States where appropriate). Each participating country is responsible for nominating their representatives on this body.

For cross-border programmes, it is important that the programming process is led as far as possible by partners from the regional and local level from the border area concerned, working in partnership with national authorities where appropriate. In the case of transnational programmes, while the programming process is often co-ordinated from the national level, regional representation is advised (based on previous experience, for transnational programmes, a maximum of 2-3 people per participating country is advised).

The programme task force will need to establish working procedures for preparing the programme. This may involve the task force itself drafting the various sections of the programme document; alternatively, sub-groups or drafting teams could be established to undertake the writing, with the programme task force acting as overseer for the process.

Desk officers should, as a minimum, try to attend the first programme task force meeting. Such participation would be at the invitation of the task force chairman and would be as an observer only. However, Commission participation would ensure that the key issues for programme preparation, and the main new elements for 2007-2013, are communicated to the programme partners. Where the Commission has specific concerns about a particular programme area or the management arrangements, or where programming exercises are delayed, desk officers may need to continue their participation in the task force meetings, subject to work constraints.

At specific milestones (e.g. 1<sup>st</sup> full draft), programme documents could be presented to the wider partnership. The exact arrangements for such consultations are the responsibility of the Member States concerned. Where a full public consultation is undertaken (as opposed to a narrower consultation of the partnership), this could be used to fulfil the requirements of the Strategic Environmental Assessment.

Costs for the programming exercise may be covered by the technical assistance budget of the current programme. Where a completely new programme is being created (e.g. because of the change to maritime border eligibility), Member States must cover the costs of the programming exercise.

### **2.2. Programme Negotiation Phase**

It is important to note that an increased Commission involvement in the preparation phase should result in a shorter negotiation exercise following the

formal submission to the Commission. It is equally important to note, however, that DG Regional Policy involvement in the preparation phase cannot be taken as implicit approval of the submitted draft programme, either by DG Regional Policy or by other Commission services.

### 2.3. Programme Content

This section provides an outline description of the content required for a Co-operation Objective programme. While specific elements are required by the regulations (and are set out below in boxes), there are no precise rules about how programmes should be formulated or the order that the various elements should be presented. Nevertheless, the outline below draws on identified best practice from the past, including the Commission's practical guide of February 2003 relating to the INTERREG programmes being prepared by the then candidate countries. Therefore, the format below can be recommended to programme authorities.

A feature of a number of existing INTERREG programmes is the concept of **sub-programmes**. These allow a single programme to be established along a particular border, but with separate sections for certain parts of the border. Alternatively, trilateral programmes also exist, with bilateral sub-programmes for each border within the programme. Sub-programmes are not expressly mentioned in the regulations, and are consequently not excluded, although their use should be restricted to duly justified cases.

If the sub-programme option is to be used, there are two methods:

- separate and distinct priorities are identified for each sub-programme; or
- priority axes are selected for the whole programme and apply equally to each sub-programme, with, if necessary, the content of the priority axes indicating the share for each sub-programme.

In either case, there will be no visible sign of the sub-programmes at decision or financial table level.

#### 2.3.1. *Programme summary and description of programming process*

This chapter should summarise the format and content of the programme. The partners should declare their willingness to cooperate and refer to bi-/multilateral agreements or Memoranda of Understanding that have been or are being prepared to follow the implementation of the programme.

The process of joint programming should be summarised here as well (e.g. composition of the task force, ex-ante evaluator, strategic environmental assessment, dates of milestones, arrangements made to consult the wider partnership, conclusions of the consultations).

### 2.3.2. Programme Area

#### Article 12 of the ERDF Regulation

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

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

#### **Cross-border co-operation**

With regard to cross-border programmes, the eligible areas (NUTS III) participating in the programme shall be listed in the programme.

Under Article 21(1) of the ERDF regulation, 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 the ERDF contribution to the programme in NUTS III areas adjacent to the eligible areas participating in the programme. Also, in exceptional cases, as agreed between the Commission and Member States, this flexibility may be extended to the NUTS II areas in which the eligible NUTS III areas are located.

Where a programme makes use of the above flexibility, it must be agreed with the Commission in advance. The areas concerned shall be listed in the programme and shall form an integral part of the programme (eg be included in the programme analysis).

Member States can decide to concentrate funding on smaller areas within the eligible NUTS III areas. If this is done, it must be indicated in the programme.

If the programme partners decide that they may wish to make use of the 10% flexibility clause in Article 21(3) of the ERDF Regulation, which allows up to 10% of a programme’s ERDF allocation to be spent outside the Union, it is recommended that this be identified in the programme. The exact amount to be used, or the detailed arrangements for its use are not required at programme level, although a justification at project level for each project making use of this flexibility will be required. The use of this flexibility will also raise particular challenges in relation to audit and control, which the managing authority will have to address.

It is recommended that a map of the programme area should be included in the programme. The map should include all non-Member State regions participating in the programme, and should indicate, in a different colour or shade, the adjacent areas included under the 20% flexibility rule.

#### **Transnational co-operation**

The transnational co-operation programmes should include a list of eligible regions participating in the programme.

Member States can decide to concentrate funding on smaller areas within the eligible NUTS II areas. If this is done, it must be indicated in the programme.

If the programme partners decide that they may wish to make use of the 20% flexibility clause in Article 21(2) of the ERDF Regulation, which allows up to 20% of a programme's ERDF allocation to be spent in other parts of the European Union outside the programme area, then it is recommended that it is identified in the programme. The exact amount to be used or the detailed arrangements for its use are not required at programme level. However, programmes may wish to specify particular neighbouring programmes with which they want to co-operate on key topics.

If the programme partners decide that they may wish to make use of the 10% flexibility clause in Article 21(3) of the ERDF Regulation, which allows up to 10% of a programme's ERDF allocation to be spent outside the Union, then it is recommended that this be identified in the programme. The exact amount to be used or the detailed arrangements for its use are not required at programme level, although a justification at project level for each project making use of this flexibility will be required.

## 2.4. Analysis

### Article 12 of the ERDF Regulation

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

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

- Under the strengthened strategic approach, the analysis should take into account the priorities of the EU as a whole, with special regard to the Lisbon objectives and Gothenburg priorities, and provide a sound analysis of the particular issues in the context of the programme area, without losing sight of the cross-border or transnational context.
- The analysis should reveal the main **development tendencies** in relation to the socio-economic development of the programme area. The identification of strengths, weaknesses, opportunities and threats in the form of a **SWOT analysis** is a useful tool to identify the strategic choices made for the programme area.
- The analytical part of the programme should refer to the whole **programme area** and not be divided into national sections. The specific features of the programme area as a whole may be articulated (taking account of the specificity of cross-border and transnational co-operation) around the relevant strategic guidelines thematic priorities, namely

- improving the **attractiveness of Member States, regions and cities** by improving accessibility, ensuring adequate quality and level of services, and preserving their environmental potential;
  - encouraging *innovation, entrepreneurship* and the growth of the *knowledge economy* by research and innovation capacities;
  - *creating more and better jobs* by attracting more people into employment;
  - encouraging a sound *spatial planning strategy* promoting a polycentric approach, and improving the *links between rural and urban areas*. This strategy should aim to strengthen the role of metropolitan areas as poles of excellence, controlling at the same time their expansion (urban sprawl) and to make small and medium towns more attractive, reinforcing their economic base;
  - improving the *governance of interventions*. This means engaging all relevant stakeholders, promoting an increased role of local authorities, achieving the right coordination between territorial and thematic priorities and encouraging good planning and management practices.
- While there is a need for a thorough and detailed analysis, this chapter should concentrate on the main outcomes of the analysis, and consequently cover a limited number of pages (around 10 on average). This is especially true for the smaller cross-border programmes, where a proportionate approach to the financial size of the programme should be taken into account.
  - The analysis should also take into account the main lessons learned from the previous programming period, based on available results (evaluation studies, audits report, academic research etc.), as well as the findings of the ex-ante evaluation. These should allow for the identification of the main achievements, best practices and successful interventions which should be taken on board in the new programming period.
  - Furthermore, the analysis should describe,
    - the environmental situation;
    - the situation in terms of equality between men and women with regard to labour market opportunities, including constraints on specific groups and situation in terms of equality of ethnic minorities with regard to labour market opportunities where appropriate.
  - The analysis should make use of indicators and regional statistics that exist at the cross-border or transnational level, as appropriate. Desk officers should bear in mind the limited level of statistics available at this level. In some cases, it may be appropriate for such statistics to be presented for each participating area, with aggregation where possible.

## 2.5. Strategy

### Article 12 of the ERDF Regulation

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

- 1) *an analysis of the situation of the cooperation area in terms of strengths and weaknesses and **the strategy chosen in response**;*
- ...
- 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 of the ex ante evaluation referred to in Article 48 (2) of Regulation (EC) No 1083/2006;*

- The strategy should build on the analysis and present a coherent and effective response to the identified obstacles and weaknesses in order to underpin the achievement of EU priorities. The logic of the strategic approach to cohesion must be underlined. The strategy must be relevant and appropriate to the cross-border or transnational area concerned.
- The strategy should include the following elements :
  - **overall strategic goal of the Co-operation Programme.** The co-operation programme’s strategic goal should be consistent with relevant European, national and regional policies.
  - Justification, relevance and consistency of the objectives of the OP on the basis of the **specific territorial needs** identified in the analysis
  - **specific objectives** which the programme’s priorities aim to achieve, in line with the strategic goal. The link between the programme’s specific objectives and the priority axes should be clearly established.
  - The achievement of specific objectives should be measured by **result and impact indicators** as appropriate<sup>39</sup>, when they lend themselves to quantification. The indicators must be achievable by the interventions carried out under the respective priority axis. The Lisbon indicators may be used for this purpose, where appropriate.
  - **identification of priority axes and their justification.** The choice of priorities should be justified in the light of the objectives of the Programme. The financial allocations per priority axis should be justified by the strategy.

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<sup>39</sup> The use of impact indicators is not a legal requirement, but should be recommended.



- An **indicative breakdown by category** at programme level of the programmed use of funds, including the Lisbon earmarking targets, in accordance with Article 11.2 and Annex II of the Commission Implementing Regulation.
- a summary description of the main findings of the **ex-ante evaluation** (Article 48) on the planned impacts of the programme’s strategic and specific objectives and priorities, including for impacts that may be difficult to quantify. For reasons of transparency, it is recommended that a short summary of the ex-ante evaluation is included within the text of the programme<sup>40</sup>. Information on where the full report is available shall be provided (art.47.3). It is recommended that the ex-ante evaluation report be submitted with the OP to the Commission<sup>41</sup>. For detailed recommendations, see the Commission’s Working Paper n° 1 on ex-ante evaluation (Annex 1).
- Description of how the promotion and mainstreaming of **gender equality and equal opportunities** will be ensured including non-discrimination with special regards to accessibility for people with disabilities and full economic and social participation of ethnic minorities (Art. 16 of general regulation and art. 6 of the ESF regulation)
- Description of how the programme will address the issue of **sustainable development** and goal of improving the environment as set out in art. 6 of the Treaty (art. 17)
- Where a Strategic Environmental Assessment has been undertaken, a description of how the SEA results, including results of public consultation, have been taken into account in the programme strategy. Where the SEA directive has not yet been transposed into national law, the programme should demonstrate that its requirements have been met.

## 2.6. Programme’s Priority axes

### Article 12 of the ERDF Regulation

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

- 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***

<sup>40</sup> The following information should be included in the ex-ante evaluation summary: what were the main evaluation questions? What were the main recommendations and findings of the evaluation? Which recommendations were taken into account (and which were not and why)? Where can the full text of the evaluation be found?

<sup>41</sup> In line with art. 48 of the general regulation, for the Territorial Co-operation objective, an ex-ante evaluation shall be jointly carried out either for each OP or for several OPs.

*account the principle of proportionality. The indicators shall make it possible to measure the progress in relation to the baseline situation and the achievement of the targets of the priority axis;*

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

**9) an indicative list of major projects within the meaning of Article 39 of Regulation (EC) No 1083/2006 expected to be submitted during the programming period for Commission approval.**

- The **description of a priority axis** will no longer contain information about “measures” in the meaning of the 2000-06 programming period. Nevertheless, the priority axes should still provide clear indications of the main areas of interventions and activities. Thus, the description of the priority axes should normally include, in particular:
  - the **main objectives** of the priority axis
  - **sufficient information on a list of indicative activities**, underpinning the indicative breakdown by the categories provided at the level of the strategy. This is an important element to allow the Monitoring Committee and other reporting mechanisms (Annual Implementation Reports etc.) to operate efficiently.
  - identification of the main **target groups/sectors/areas, and/or beneficiaries** [Annex II of the Commission Implementing Regulation];
  - **quantified targets and indicators**. All priority axes should set quantified targets where they lend themselves to quantification. It is recommended to select only a limited set of indicators for each priority that measure the achievement of the set objectives. The choice of appropriate indicators is indispensable for the functioning of reporting mechanisms and to allow the Monitoring Committee to fulfil its tasks. Output and result indicators may be used. Given the more strategic and results-oriented approach of the 2007-13 Regulations, it is preferable to use result indicators. The indicators must make it possible to measure the progress as compared to the initial situation and also to measure the effectiveness of the chosen interventions to reach the objectives. Indicators need to be sensitive, i.e. that the programme is capable of bringing about a change in the indicator value. In this context, indicators should be presented with a clear definition, a baseline, a quantified target and an explanation of the respective measurement method, and source of information. There should be an estimate of the proportion of the activities concerned that are covered by the indicators chosen. For more methodological details see the Commission’s Working Paper n° 2 on Indicators for Monitoring and Evaluation (Annex 2).

The identification and quantification of indicators in relation to cross-border and transnational co-operation is a particular challenge and it is recommended to make use of the core indicators presented by the Commission.

- avail of the **additional flexibility** in relation to ESF-type actions. Under INTERREG III, the ERDF could support ESF activities without any particular limitations (while complying with the ESF regulation). Under the Co-operation Objective, a similar flexibility is available via the 2<sup>nd</sup> sub-paragraph of Article 6(1) of the ERDF Regulation for cross-border co-operation, which considers that actions relating to the integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion and sharing of human resources can all be funded via the ERDF without any particular limit.

This contrasts with the 10% flexibility for other programmes, whereby ESF-type actions can be supported in an ERDF programme up to a limit of 10% of the ERDF allocation to each priority. This also applies to ESF-type actions within a cross-border programme which fall out with the list of topics listed in the previous paragraph.

- Information on co-ordination with (and possible impact on):
  - Convergence or Competitiveness and Employment Objective programmes covering the eligible cross-border or transnational programme area;
  - other cross-border or transnational co-operation programmes covering parts of the eligible area
  - similar activities financed by the *EAFRD*<sup>42</sup> and by the *EFF* (Art. 12.7).
- It is recommended that the **technical assistance** actions should be presented as a separate priority axis. This would further facilitate the verification of the financial limits (6 % maximum of total allocation of each programme) set for preparatory, management, monitoring, evaluation, information and control activities and activities to reinforce the administrative capacity for implementing the Funds (Art. 46).
- In the event that a programme wishes to make use of **global grants**, this must be described under the priority concerned. Further details are set out in chapter 5. It should be noted that global grants have not been used for any of the current 81 INTERREG III programmes and it is unlikely that this will change under the Co-operation Objective.

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<sup>42</sup> Article 65 of Council Regulation (EC) N° 1698/2005 on EAFRD

- Given the level of financing likely to be available within individual co-operation programmes, major projects are not expected.

## 2.7. Implementing provisions

### Article 12 of the ERDF Regulation

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

...

- 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 69 of Regulation (EC) No 1083/2006;*
  - f) a description of the procedures agreed between the Commission and Member States for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No 1083/2006;*

- The provisions for implementing each programme shall include a description of:
  - **the single managing authority, the single certifying authority and the single audit authority** designated by the Member States for the co-operation programme. This should include the name of the authorities and bodies and/or any other specific information necessary to identify them in a non-ambiguous manner, a brief description of their role and responsibilities in the management and the control of the programme and how they exercise them. The audit authority must be situated in the same Member State as the managing authority. Annex 8 of the Aide-Mémoire provides further details as regards management and control systems.
  - **The joint technical secretariat**, which will assist the managing authority, monitoring committee, and, where appropriate, the audit authority in carrying out their duties. The secretariat will be based in a single location, normally in the same Member State as the managing authority.
  - The public or private **body designated to give an opinion on the compliance of the systems descriptions** when this is not done by the Audit Authority.
  - the **body or bodies responsible for making payments to the beneficiaries**

- Each programme document should include a description of:

- the **monitoring and evaluation system**: the programme document should describe the indicator system established and define how it will be used. This could include responsibility for the collection of data and its initial analysis (this is normally done by the managing authority), regular presentation of data to the Monitoring Committee, use in annual reports, and use for evaluations.
- the arrangements [to be] agreed between the Commission and the Member States for the computerised exchange of data needed to fulfil the management, monitoring and evaluation requirements. The exchange of computerised information is required under the general Regulation, ERDF Regulation and Implementing Regulation. The description should include information on the procedures being implemented to provide assurance on the reliability of the accounting, monitoring and financial reporting systems in computerised form, including the way according to which they will ensure the security and the reliability of the electronic data exchanges. The OP should also include information on internal circuit between the "central trusted third party" for confirmation and update of SFC 2007 access rights requests and each individual requesting an up-to-date access to SFC 2007 and the scope of verifications made by the central body on which the Commission will rely for giving access rights and their update (suppression, modification of the profile).
- the **procedures for the mobilisation and circulation of funding ensuring that financial flows** are transparent: this relates to the description of the organisation of two types of financial flows:
  - the contribution of the various partners to the financing of the programme (and its priorities) and its organisation;
  - the main stages of Community funding from the body responsible for making payments to beneficiaries to the lead beneficiary;
- the elements aiming at ensuring the **publicity and information** of the programme (see Chapter II of Commission implementing Regulation) The communication plans (developing those elements mentioned in the OP) shall be sent for the examination within 4 months after the adoption of the OP. See Annex 7 with more detailed guidance on the information and communication.
- The procedures for ensuring that the **partnership principle** is applied at all levels of implementation (art. 11 of General Regulation), including in the composition of the Monitoring Committee, and a description on how partnership will be ensured in the development and implementation of the projects.

- The procedures ensuring the integration of gender perspective and principle of non-discrimination are taken into account during various stages of implementation with special regard to the accessibility of disabled persons. (Art. 16)

## 2.8. Financial Provisions

### Article 12 of the ERDF Regulation

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

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

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

a) *a table breaking down for each year, in accordance with Articles 52, 53 and 54 of Regulation (EC) No 1083/2006, the amount of the total financial appropriation envisaged for the contribution from the ERDF. The total ERDF contribution provided for annually shall be compatible with the applicable financial 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 53 of Regulation (EC) No 1083/2006, the national counterpart is made up of public and private expenditure, the table shall give the indicative breakdown between the public and the private component. Where, in accordance with that Article, the national counterpart is made up of public expenditure, the table shall indicate the amount of the national public contribution;*

The tables at the end of this chapter set out the financial plans for Co-operation programmes. For each programme this should be in conformity with the financial perspectives.

No information within the programme should indicate a breakdown of funding between the participating Member States or regions.

The modulation of the co-financing rates at priority axis level in the light, in particular, of criteria defined in art. 52 of the general Regulation should be justified. On request of the Member State, the Commission will calculate the contribution from the Funds in reference to either total expenditure or public expenditure at the level of the priority axis, as long as the ceiling rate is respected at programme level. If this flexibility is not chosen, the basis for the co-financing rate at programme level should be mentioned in each priority axis.

It is recommended that at priority axis level information on expected use of state aid is provided.

## **2.9. Procedure for the adoption of Programmes**

### Article 32(3) of General Regulation

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

### Article 32(4) of General Regulation

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.*

The definition of the content of the programme and the procedure for the approval of the programme are provided by Articles 32 and 37 of Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund for the programming period 2007-2013. Art. 12 of the ERDF Regulation defines the content of the programmes under the European territorial co-operation objective.

Formally, the Member State can submit OP between the day of the entry into force of the Regulations, thus before the adoption of the Community strategic guidelines and the submission of the National Strategic Reference Framework, but no later than 5 months from the adoption of the Community Strategic Guidelines. The attention of the Member States should be drawn to this deadline, where necessary. The Commission decision on the OP under the European territorial co-operation Objective will in any case not be taken before 1 January 2007.

#### *2.9.1. Admissibility check*

Article 12 of the ERDF Regulation sets out the content for Co-operation programmes. A programme will be automatically admissible if it contains all the elements required under the regulatory provisions.

The starting date of eligibility of expenditure is the date of formal submission of an admissible OP (the submission can take place only after adoption of the general Regulation) or 1 January 2007, whichever is earliest (Art. 56 (1)) 43. The date of eligibility will be entered in SFC 2007.

If an OP does not contain the required elements mentioned in Article 12 of the ERDF Regulation, it is not admissible. The information transmitted to Member States must mention the exact reason which justifies its non admissibility and stipulate the consequences of non admissibility i.e. that the eligibility cannot start. After submission of the new version of the OP the procedure starts from the beginning. The final information on admissibility including the starting date of eligibility is sent by the authorising officer to the Member State (through SFC 2007).

The formal indication to Member State on whether an OP is admissible or not must be sent *within 10 calendar days*<sup>44</sup> via SFC 2007.

#### 2.9.2. *Quality check*

The programme must be formally adopted by the Commission within 4 months following its formal submission (Article 32(5)). The starting date for the calculation of the deadlines for the approval of the programme is the date of receipt of an admissible programme. The Commission services will have *two months* from the date of the receipt of an admissible programme for the quality check and for asking further information or requesting a revised version of the programme (art. 32(4)). The quality check is based on the elements detailed in Article 12.

Accordingly, the desk officer has to proceed with the inter-service consultation within the two months.

As regards the management and control systems, the quality check should ensure that the structures and bodies are compliant and that major weaknesses identified for the 2000-2006 period are satisfactory addressed.

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<sup>43</sup> This is particularly relevant for cases when the Member State submits the OP before 1 January 2007. For ROM and BUL, this date cannot be before 1 January 2007

<sup>44</sup> For further internal procedures to be followed within DG REGIO, refer to note Adonis n° 230659 of 31 July 2006.



It should be noted that the request from the Commission will delay the time limit for the approval of the programme in the same proportion of the time taken by the Member State for providing a satisfactory answer.

## **2.10. Implementation Specificities for the Co-operation Objective**

### *2.10.1. Monitoring Committee*

The Member States shall set up a monitoring committee for each programme, in agreement with the Managing Authority within 3 months of the date of notification of the decision approving the programme to the Member States. The composition of the Monitoring Committee shall be decided by the Member States.

Each country participating in the programme shall appoint representatives to sit on the committee.

Article 64 of the general regulation states that “The Monitoring Committee shall be chaired by a representative of the Member State or the Managing Authority”. The reference to “Member State” in the singular must be understood in the plural for Co-operation programmes.

### *2.10.2. Steering Committee*

The tasks of the Monitoring Committee are set out in Art 65 of the General Regulation. Article 19(3) of the ERDF Regulation states that the Monitoring Committee shall be responsible for selecting projects in Co-operation Objective programmes.

However, Article 19(3) also states that Steering Committees, reporting to the Monitoring Committee may be used for this task as well. This is in line with the tradition in co-operation programmes of separating selection from monitoring. Where a programme is divided into sub-programmes, separate steering committees may be established for each sub-programme.

While the Commission sees a clear benefit in terms of simplification from a single committee approach, certain programmes may wish to continue with separate committees. This is possible given the wording of the regulation, although this should be the subject of careful reflection.

### *2.10.3. Overlap of Monitoring Committees*

The comments set out in chapter 7 about overlaps between monitoring committees of the 2000-2006 period and the 2007-2013 period apply equally to the Co-operation Objective/INTERREG situation. Where programme areas have changed for 2007-2013, practical solutions will have to be found on a case by case basis.

In the event that certain programmes along the external borders of the Union are funded by the European Neighbourhood and Partnership Instrument or the Instrument for Pre-accession, the existing Monitoring Committees and managing authorities will remain in place until the closure of the current programmes.

#### *2.10.4. Annual Reports*

Chapter 8 applies equally to Co-operation Objective programmes. It should be noted that there must not be any breakdown of funding per Member State reported in the Annual Report.

#### *2.10.5. Annual Review*

The provisions in chapter 7 apply equally to Co-operation Objective programmes. However, given the number of Co-operation Objective programmes, and the experience from INTERREG III, it is likely that the written procedure approach will be the principle method used for the Annual Review.

#### *2.10.6. Common rules of eligibility*

A series of common eligibility rules for co-operation programmes has been established in Articles 48-53 of the Commission Implementing Regulation. These deal with financial charges and guarantee costs, expenditure by public authorities, in-kind contributions, overheads and depreciation.

Article 13 of the ERDF regulation states that "the relevant national rules agreed by the participating Member States shall apply to determine the eligibility of expenditure except where Community rules are laid down. Member States may therefore, if they so wish, use joint eligibility rules at a programme level in order to ensure a common approach for project partners within the programme. Such additional joint eligibility rules could, for example, be based on previous experience from the common rules of the 2000-2006 period.

### **2.11. European Grouping of Territorial Co-operation**

Member States may wish to examine the possibility of creating a European Grouping of Territorial Co-operation (EGTC) to take on the role of managing authority for certain Co-operation Objective programmes.

Project partners may wish to use an EGTC to be the lead beneficiary for the implementation of a co-operation project.

Further information is set out in chapter 7 of this Aide-Memoire.

### 3. KEY DIFFERENCES COMPARED WITH THE 2000-06 PROGRAMMING PERIOD

The first fundamental change concerning the co-operation programmes for the 2007-2013 period is the **change of status** of INTERREG from a Community Initiative to the “European Territorial Co-operation” Objective. The status of Objective gives the co-operation element of regional policy a significantly higher level of visibility and firmer legal base compared to the current Community Initiative dimension.

One consequence of the status as an objective is that there is **significantly more information about co-operation procedures in the regulations** compared to previous programming periods. Much of this is new and its implementation will need to be monitored especially carefully. At the same time, the information in the regulations is still much less than has previously been included in the “INTERREG Guidelines” which have been issued as a Commission Communication in previous periods. It is to be expected therefore, that there will be much demand from programme partners for additional information and assistance from Commission desk officers. Notwithstanding the formal position of Member States in the Council negotiations (no additional guidance apart from the regulations), the Commission will have to provide as much assistance as possible during the programme preparation phase.

The increased focus on the **strategic approach to programming**, common to all Structural Fund programmes, constitutes another key change as compared to the current programming period. In this context, future co-operation programmes should seek to establish a clear and coherent policy response which on the one hand underpins the achievement of EU objectives and on the other hand tackles the particular challenges and needs of the programme area.

In this context, the main focus of the co-operation programmes should be the description of the strategy and priorities, including the coherence of the objectives and priorities along with related indicators. The analytical part therefore should not take more than 10 pages in length. The implementing provisions should *grosso modo* be of the same volume as under the current programming period. The financial tables will be substantially simplified and limited to the priority level.

It must be emphasised that the **key principles** of EU cohesion policy – *programming, partnership, co-financing and evaluation* – will continue to apply in the programming period 2007-2013.

In the context of cross-border co-operation, two fundamental changes have taken place in relation to eligibility. Firstly, concerning **maritime borders**, all NUTS III areas within 150km by sea of another country become eligible for cross-border co-operation programmes. This is likely to change the geographical coverage of several existing programmes and even create new programme areas.

Secondly, the **external borders** to the east, south and south-east of the European Union will no longer be supported via Structural Funds programmes. Instead, they will be supported by the cross-border part of two new instruments: the European Neighbourhood and Partnership Instrument and the Instrument for Pre-Accession. Co-operation with non-Member States which do not receive financial assistance

from the EU (e.g. Norway, Switzerland, Liechtenstein etc) will continue to be supported through Co-operation Objective programmes.

With regard to **transnational co-operation**, a move away from spatial planning and spatial development issues is expected. Instead, a more practical type of co-operation will be supported, resulting in more concrete and visible results. This is linked to the potential content of the transnational co-operation programmes, which will be narrower than in the past, and will be linked more directly to the geography and needs of each programme area.

As far as **interregional co-operation** is concerned, the programmes will deal with interregional co-operation itself, as well as technical assistance to co-operation programmes, urban networking and spatial planning. The programmes supported under this strand will involve all Member States. As such, although they must comply with the regulations as for other programmes, the programming process is likely to involve the Commission to a greater extent than for other programmes.

## Financing plans for the operational programme (Co-operation Objective)

**Table 1 : Financing plan of the Programme giving the annual commitment of ERDF in the programme**

Commitments shall be made on an annual basis according to the following plan:

Operational programme reference (CCI number):

*Year by source for the programme, in euro:*

	ERDF
2007	
2008	
2009	
2010	
2011	
2012	
2013	
Grand Total 2007-2013	

**Table 2 : Financial plan of the operational programme (Co-operation Objective) giving, for the whole programming period, the amount of the allocation of ERDF in the programme, the national public and private contributions and the rate of reimbursement by priority.**

Payments are made as reimbursements of expenditure actually paid out according to the following plan.

*Operational programme reference ( CCI number):*

*Priority axes by source of funding (in euros)*

	Community Funding (a)	National Public funding (b)	National private funding <sup>45</sup> (c)	Total funding (d) = (a)+(b)+ (c)	Co-financing rate (e) <sup>1</sup> = (a)/(d)	For information	
						EIB contributions	Other funding <sup>46</sup>
Priority Axis 1  Specify the basis for calculating the Community contribution (total or public)							
Priority Axis 2  Specify the basis for calculating the Community contribution (total or public)							
Priority Axis ...  Specify the basis for calculating the Community contribution (total or public)							
Total							

<sup>1</sup> This rate may be rounded in the table. The precise rate used to reimburse payments is the ratio (e) **with no rounding**.

<sup>45</sup> To be filled only when priority axes are expressed in total costs.

<sup>46</sup> Including national private funding when priority axes are expressed in public costs. May also include financing from other participating countries (e.g. Norway, Switzerland)

**ANNEX 1: WORKING PAPER N° 1 ON EX-ANTE  
EVALUATION**

TO BE ATTACHED

**ANNEX 2: WORKING PAPER N° 2 ON INDICATORS FOR  
MONITORING AND EVALUATION**

TO BE ATTACHED



# **ANNEX 3: WORKING PAPER N° 3 ON ADDITIONALITY**

TO BE ATTACHED

**ANNEX 4: WORKING PAPER N° 4 ON COST-BENEFIT  
ANALYSIS**

TO BE ATTACHED

**ANNEX 5: WORKING PAPER N° 4 ON ON-GOING  
EVALUATION**

TO BE ATTACHED

## ANNEX 6: GUIDANCE ON URBAN ACTIONS IN THE NSRF AND OPs

<b>NSRF:</b>	<b>Urban development strategy</b> (Gen. Reg. Article 27.4.b)	<b>(when appropriate)</b>
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- The Member States should identify the link between regional, national and community priorities (as set out in the Community Strategic Guidelines) when presenting the National Strategic Reference Framework (NSRF) in which they also should make strategic choices concerning objectives relating to sustainable urban development.
- It is recommended that the NSRF should set out an urban development strategy consistent with national and regional development policies. According to circumstances, the strategy may have a wider territorial focus and may encompass priorities at sub-city, city or regional level. Special attention should be paid to the role of cities in implementing the Lisbon objectives and, where relevant, to the question of social cohesion.

<b>OPERATIONAL PROGRAMMES (OP):</b>			<b>Flexible choice of Member States.</b>
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<b><u>shall</u> contain information on the approach to the sustainable urban development.</b>	<b>(where appropriate)</b>  (Gen. Reg. Article 37(4)a)
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- For the future, a more integrated approach should be pursued. For area-based actions in particular this requires that actions seeking to improve the quality of life (including the environment and housing) or the level of services to citizens are combined with actions to promote economic competitiveness and job creation in order to secure the long-term future of the urban areas concerned.

<b>❖ OP <u>may</u> contain a priority axis for urban development.</b>	Optional to Member States (M.S.)
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- Except for certain cases (such as rural regions), it is recommended to include a specific priority axis for sustainable urban development based on sound analysis of needs and opportunities in urban areas, which may focus on thematic or territorial priorities, or both. It may contain integrated measures to tackle the problems of distressed urban areas under Article 8 of the ERDF Regulation (in

addition selected thematic actions included in an urban development plan may also be co-financed under the urban priority axis). Member States should also indicate their intentions with regard to the use of JESSICA initiative so that the necessary involvement of the EIB and the CEB can be organised.

❖ <b><u>may</u> contain a list of cities for addressing urban issues</b>	<b>At the initiative of the M.S</b>  (Gen. Reg. Article 37(6)a)
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- It is also recommended that the relevant priority axis include the *list of cities* chosen for addressing urban issues, taking into account the nature and scope of the actions, the fields of intervention and budget allocated. To ensure concentration of investments, regional programmes should make a strategic choice of cities and urban areas which could cover growth poles to reach the Lisbon goals, distressed urban areas requiring specific actions or urban-rural development areas.

<b>Eligible priorities:</b>	<b>ERDF Regulation (Art 5, 6 and 8)</b>
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- Article 8 of ERDF Regulation offers an enlarged scope of eligibility in the specific context of distressed areas, under the convergence and the competitiveness objectives. This article is applicable to actions as carried out under the URBAN CI. Where this actions are implemented through a specific OP.or priority axis within an OP, the ERDF funding of measures falling within the scope of European Social Fund Regulation may be raised to 15% of the programme or priority axis concerned.

<b>Operations:</b>	<b>Community Strategic Guidelines</b>
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- In order to achieve the goals of the urban development strategy defined in the NSRF Managing Authorities should concentrate resources on territorial and on thematic priorities and assure the complementarity with European Social Fund interventions in order to implement the plan for urban development.

<b>INVOLVEMENT OF CITIES:</b>	
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<b>❖ as partners:</b>	<b>compulsory</b> (Gen. Reg. Article 11)
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- MS shall organize partnership in accordance with national rules and practices.
- The partners are stakeholders representing the region(s) and cities concerned, as well as local, urban and other authorities, where relevant. For the implementation of the integrated urban development strategy, local authorities are considered relevant. They should be involved in designing and implementing programmes. In particular it is recommended that they be consulted when deciding the development strategy, selecting the intervention areas and selecting the projects.
- Cities playing a special role in the development of the region should be represented in the Monitoring Committee.

<b>❖ sub-delegation:</b>	<b>OP <u>may</u> contain the procedures for</b> (Gen. Reg. Article 37(6) a)
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- The involvement of the cities should be coherent with the national political and administrative structures of each MS and take account of the nature and scope of the actions, the area of intervention and the budget allocated. Therefore this involvement should be interpreted flexibly enough to allow an appropriate solution for all MS.
- The implementation of area-based integrated actions for sustainable urban development (Article 8 of the ERDF Reg.) normally should fall under the responsibility of cities. In those cases subdelegation of day-to-day management of actions is suggested. Modalities of subdelegation may include global grants as well as other appropriate arrangements.

<b>FINANCIAL ENGINEERING:</b>	<b>Choice of management authorities Gen. Reg. Art 44</b>
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<b>JESSICA:</b>	<b>Gen. Reg. (Art 44 and 78 (6)a)</b>
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- JESSICA, Joint European Support for Sustainable Investment in City Areas, provides a readymade framework for the authorities in the Member States to make effective use of grant and non-grant instruments in urban renewal and development. Authorities using JESSICA would benefit from the expertise and capital resources deriving from the cooperation agreement between the Commission, the EIB and the CEB on financial engineering for sustainable urban development (including loans for social housing where appropriate) in the context of cohesion policy.
- JESSICA will operate through the identification of specialist urban development funds (funds investing directly in public-private partnerships (PPPs) and other projects in the urban context), or, holding funds (funds investing in more than one urban development fund, providing them with equity, loans or guarantees).
- Where a managing authority wishes to participate under the JESSICA framework it would a) launch a call for expression of interest and select an urban development fund or b) would entrust the EIB directly (or other institution according to procurement rules) with the tasks of holding fund. Managing authorities would contribute resources from the programmes concerned, while the EIB, other international financial institutions, private banks and investors would contribute additional loan or equity capital as appropriate and where market conditions allow.
- Projects approved for support will be financed under JESSICA only through equity or loans, and not through grants. It is envisaged that a pre-condition would be that projects would be supported only in the context of an integrated plan for sustainable urban development.
- As is the case for the other financial engineering instruments, contributions from the programmes to the fund or holding fund shall be considered as eligible interim payments under the ERDF.

- During 2000-2006 programming period, housing is not considered an eligible activity under the Structural Funds. Nevertheless certain housing-related activities in urban regeneration, social inclusion and attracting investment to a specific area have been co-financed under the ERDF and will continue to be co-financed.
- For the 2007-2013 programming period, Article 7(2) of the ERDF regulation provides that:

*The expenditure of housing shall be eligible only for the Member States entering the European Union on or after 1 May 2004 and in the following circumstances:*

- a) expenditure shall be programmed within the framework of an integrated urban development operation or priority axis for areas experiencing or threatened by physical deterioration and social exclusion;*
  - b) the allocation to housing expenditure shall be either a maximum of 3% of the ERDF allocation to the operational programmes concerned or 2% of the total ERDF allocation;*
  - c) expenditure shall be limited to:*
    - multi-family housing or*
    - buildings owned by public authorities or non-profit operators for use as housing designated for low-income households or people with special needs*
- The areas selected for housing operations referred to in Article 7(2) of ERDF Regulation shall comply with at least three of the following criteria, two of which selected among those listed under (a) to (h):
    - a- a high level of poverty and exclusion*
    - b- a high level of long-term unemployment;*
    - c- precarious demographic trends;*
    - d- a low level of education, significant skills deficiencies and high dropout rates from school;*
    - e- a high level of criminality and delinquency;*
    - f- a particularly rundown environment.*
    - g- a low level of economic activity;*



*h- a high number of immigrants, ethnic and minority groups, or refugees;*

*i- comparably low level of housing value;*

*j- low level of energy performance in buildings.*

The values for the above criteria will be collected by each Member State concerned at national level.

<b>STRATEGIC FOLLOW-UP</b>	Gen Reg. Art.29 and 30
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- The urban development strategy should be clearly identifiable in the framework of the strategic follow-up report, as requested by the Parliament to the Council in its report on the urban dimension in the context of enlargement (EP(2005)0272).

## ANNEX 7: GUIDANCE ON INFORMATION AND PUBLICITY PROVISIONS

The objective of this Annex is to facilitate the work of the geographical units in DG REGIO and EMPL and to provide them with a unified tool necessary for examining the communication plans.

Information and publicity measures are part of the management of OPs. For the 2007-2013 period, these measures fall under Art. 69 of the Council Regulation (EC) No 1083/2006 and Chapter 2, Section 1 of the Commission regulation. In comparison with the 2000-2006 period, three elements have to be highlighted:

- the communication plan includes minimum requirements;
- Community networks of OP communication officers may be set up;
- lists of beneficiaries, the name of the operations and the amount of public funding will be published by Managing Authorities.

### 1. Assessment of the communication plan

Art. 3 of the Commission regulation concerns the “examination of the compatibility of the communication plan”. Art 2.2 of the Commission regulation states that the communication plan shall include the following elements:

- aims:
  - a) highlight the role of the Community, that is to ensure that the added value of Community assistance is explained to general public
  - b) ensure that assistance from the Funds is transparent, that is the procedures to access to the money of the co-financed programmes are made clear to potential beneficiaries
- **target groups:** potential beneficiaries, beneficiaries and the wider public;
- **strategy:** this should be an integrated set of activities and tools consistent with the aims to be attained;
- **content:** measures, tools and timetable should be described. All the obligatory measures mentioned in Art. 5 – 7 of the Commission regulation are part of the communication plan;
- **indicative budget:** this must include the breakdown of MS public/private funding and Community co-funding;
- **administrative departments or bodies:** must be named, together with the full contact details;
- **evaluation:** the plan should contain an outline of the evaluation of information and publicity activities, including output and results indicators.

### Assessment grid for the examination of the communication plan

	<b>Question</b>	<b>OK</b>	<b>Observation (if not 'OK')</b>
<b>1.</b>	<b>The aims</b>		
1.1.	The aim of highlighting the role of the Community is clearly mentioned.		
1.2.	The aim of transparency is clearly mentioned.		
<b>2.</b>	<b>Target groups</b>		
2.1.	The communication plan mentions the key target groups:  - potential beneficiaries, - beneficiaries, - the public.		
2.2.	The communication plan mentions specific communication measures addressed for different target groups.		
<b>3.</b>	<b>Strategy</b>		
3.1.	The different information and publicity measures and the rationale behind them are put into context and give a view of what will be achieved.		
3.2.	The expected results of the planned information and publicity measures and the ways in which to achieve them are defined.		
<b>4.</b>	<b>Content</b>		
4.1.	The information and publicity measures in the plan cover the whole duration of the Operational Programme/s.		
4.2.	The information and publicity measures differentiate between the target groups.		
4.3.	Different media/channels/tools are foreseen.		
4.4.	A major information activity for the launch of the Operational Programme/s is foreseen and described.		
4.5.	At least one major information activity a year, presenting the achievements of the Operational Programme/s is foreseen and described.		

4.6.	Flying the European flag during one week starting 9 May, in front of the premises of Managing Authorities is foreseen.		
4.7.	The publication (electronically or otherwise) of the list of the beneficiaries is foreseen and described.		
<b>5.</b>	<b>Indicative budget</b>		
5.1.	There is an indicative budget for the information and publicity activities.		
<b>6.</b>	<b>Administrative bodies responsible for information and publicity on structural funds</b>		
6.1.	There is a clear indication of the responsible departments or bodies or persons responsible for the implementation of information and publicity measures together with the contact details.		
<b>7.</b>	<b>Evaluation indicators</b>		
7.1.	The communication plan contains the indicators necessary for the evaluation.		
7.2.	The evaluation will measure to what extent the objectives of visibility and awareness of operational programmes and the role played by the Community have been achieved.		

## **2. Procedure for the assessment of Communication Plans (Art. 3 of the Commission regulation)**

a) Geographical units shall receive the communication plans within **four months** of the date of the adoption of the Operational Programme or, where the communication plan covers several Operational Programmes, of the date of the adoption of the last of these Operational Programmes.

b) Geographical units have **two months** to examine the communication plans following the assessment grid.

c) Possible scenarios after the assessment:

- **NO OBSERVATIONS.** The communication plan contains all obligatory elements and the observations made in the check-list are insignificant. Although not foreseen in Art. 3 of the Commission regulation, the geographical unit shall send a letter to the Member States or the Managing Authorities, informing them that the communication plan meets all requirements set out in the regulation.

- **OBSERVATIONS.** One or more obligatory element/s of the communication plan is/are missing or insufficiently elaborated. The geographical unit, after having consulted the respective information units in DG REGIO and EMPL, shall send its observations to the Member States or the Managing Authorities, specifying required changes to the communication plan, In case of multi-Fund Programmes, the lead DG will prepare the letter, and once agreement with the respective unit of the other DG has been reached, sign it and send it.

d) The Member State or the Managing Authority has **two months** to send a revised communication plan back to the Commission.

e) The geographical units have **two months** to examine the communication plan following the previous observations made in the assessment grid. In case of further substantial observations, the case is put to the relevant director for decision.

f) In the absence of further comments from the Commission the communication plan shall be deemed valid.

In case of a communication plan covering more than one Operational Programme co-financed from different funds, the responsible geographical units of DG REGIO and DG EMPL shall decide which of them will be the lead DG and shall make a joint decision.

**NOTE:** The communication plans and the possible letters with observations made for the Operational Programmes for the ERDF and the Cohesion Fund by the geographical units shall be copied to the Information and Communication Unit of DG REGIO.

The communication plans and the possible letters with observations made for the Operational Programmes for the ESF shall be copied to the Communication and CAD Units of DG EMPL, and put on the DG EMPL Intranet.

### **3. Role of the information and communication units in DG REGIO and DG EMPL**

The Information and Communication Unit of DG REGIO and the Communication, CAD Unit of DG EMPL shall be responsible for setting up and coordinating **networks** of information and communication officers, delegated by the Managing Authorities in line with Art. 10 of the Commission regulation. The aim of the networks shall be to ensure exchange of good practice, including the results of implementation of the communication plan, and exchange of experience in implementing the information and publicity measures.

## **ANNEX 8: GUIDANCE ON MANAGEMENT AND CONTROL SYSTEMS**

### **(1) SYNOPSIS OF THE PROVISIONS LAID DOWN IN THE GENERAL REGULATION N° 1083/2006**

#### **Article 58 – General principles of the management and control systems**

Sets out the essential elements to be satisfied by any management and control system:

- Definition and allocation of functions of the bodies concerned
- Separation of functions between and within such bodies
- Procedures to ensure correctness and regularity of expenditure declared
- Reliable accounting systems in computerised form
- System of reporting and monitoring of tasks entrusted to another body
- Audit arrangements
- Systems providing adequate audit trail
- Reporting and monitoring of irregularities and recoveries

#### **Article 59 – Designation of authorities**

Managing Authority MA – manages and implements the operational programme in accordance with principle of sound financial management

Certifying Authority CA (currently paying authority) certifies statement of expenditure and applications for payment

Audit Authority AA (currently national audit body and/or winding-up body, in most cases) – verifies effective functioning of management and control systems; functionally independent of MA and CA

- Intermediate bodies would be designated by MS to carry out tasks of MA or CA under the responsibility of that authority; *See also Article 12 of Commission Regulation for more detailed rules*

#### **Article 60 – Functions of Managing Authority**

- Operations selected according to programme criteria and comply with Community and national rules (during implementation period)
- *Beneficiaries must be informed of conditions*
- *Satisfies itself on capacity of beneficiary to fulfil obligations*
- Verifies delivery of products and services, that expenditure is actually incurred and complies with rules
- *Verifications to cover administrative, financial, technical and physical aspects*
- *Administrative and on the spot verifications*
- *Intensity based on level of risk*
- *Sampling method must be justified*
- *Written standards and procedures and records of verifications*

- Computerised system for recording and storing accounting records and other data on implementation for financial management, monitoring, verifications, audits and evaluations
- *Adequate audit trail*
- *Conserving supporting documents*
- Beneficiaries maintain separate accounting system or adequate accounting code for all transactions
- Ensures evaluations of operational programmes are carried out in accordance with Art 47
- Procedures for archiving of documents in accordance with Art 90
- Ensures all information on procedures and verifications are provided to CA
- Guides work of monitoring committee and provides it with documents required
- Draws up annual and final reports on implementation to Commission
- Ensures compliance with information and publicity requirements (Art 69)
- Provides information to Commission to allow it to appraise major projects
- *See Articles 13 – 15, 18, 21 of Commission Regulation for more detailed rules*

#### **Article 61 – Functions of Certifying Authority**

- Certifies that:
  - (i) Statement of expenditure is accurate, based on reliable accounting system and verifiable supporting documents
  - (ii) Expenditure complies with Community and national rules and has been incurred in respect of eligible operations
- *Underlying transactions legal and regular*
- CA must receive adequate information from MA on its procedures and verifications
- Takes account of all audits carried out by AA and the results
- Maintains accounting records in computerised form of expenditure declared
- CA keeps account of amounts recoverable, recovered and amounts withdrawn following cancellation; amounts withdrawn are deducted from next statement of expenditure – *provides annual report on these amounts*
- *See Articles 19 and 21 of Commission Regulation for more detailed rules*

#### **Article 62 – Functions of Audit Authority NEW**

*For each programme designated AA has overall responsibility for all audit work – but execution of audits may be by other bodies*

- Ensures execution of systems audits (to verify effective functioning of the management and control systems)
- Ensures execution of audits of sample of operations (to verify expenditure declared)
- Presentation of audit strategy within 9 months of approval of programme
- Audit strategy may be combined for several programmes

- Submits an annual control report and an annual audit opinion by 31 December each year; first annual control report to be submitted 31 December 2008 and covers period 1/1/07 to 30/6/08 (*see Diagram 2*); submits under Art 88, declaration for partial closure, when applicable
- Submits by 31 March 2017 a closure declaration supported by a final control report (*see Diagram 2*)
- Ensures that audit work is performed to internationally accepted audit standards - **NEW**
- Ensures that bodies undertaking audit work are independent
- Commission to provide comments on audit strategy within 3 months of its receipt otherwise considered accepted
- *See Articles 16 – 17 and 22 of Commission Regulation for more detailed rules*

### ***Annual Control Report***

*-implementation of audit strategy and any changes to the audit strategy*

*(audit strategy follows model in Annex V of Commission Regulation **NEW**)*

*-sample of operations are selected based on the method as described in Annex IV of Commission Regulation ie separate random and complementary samples; with fixed confidence and materiality levels fixed for random samples **NEW***

*-audit findings*

*-systems weaknesses*

*-model in Annex VI of Commission Regulation*

### ***Audit Opinion NEW***

*-based on work carried out in conformity with strategy*

*-whether system has functioned effectively so as to provide reasonable assurance on correctness of statements of expenditure and as a consequence on legality/regularity of underlying transactions*

*-model in Annex VII of Commission Regulation*

### **Article 70 – Management and Control**

- Member States are responsible for management and control systems by: a) ensuring systems are in accordance with Articles 58-62 and function effectively and b) preventing, detecting, correcting irregularities and communicating these irregularities to Commission and recovering amounts unduly paid
- When amounts unduly paid cannot be recovered, MS is responsible for reimbursing EU when the loss is its fault
- *Rules on communication of irregularities in Section IV of Commission Regulation*



## **Article 71 – Setting up of Management and Control systems (Ex-ante Compliance Assessment) NEW**

- Within twelve months of programme approval and before first payment claim: MS shall submit a description of the systems, covering: a) MA, CA and intermediate bodies and b) AA and any other bodies under its responsibility (*model in Annex XII of Commission Regulation*) + assessment report + opinion
- Include an assessment of the setting up of the systems and an opinion on their compliance with Articles 58-62 (*model in Annex XIII of Commission Regulation*). The report is deemed accepted and first interim payment may be made a) within two months of date of receipt of the report when the opinion is without reservations or b) if the opinion contains reservations, upon confirmation to the Commission that corrective measures concerning key elements of the system have been implemented and reservations withdrawn
  - If reservations concern only one priority axe, an interim payment may be made for others not affected
- The report and opinion are established by AA or other national body functionally independent of the MA and CA and should take account of internationally accepted audit standards when carrying out its work
- Systems common to several operational programmes may be described in one single report and opinion
- *See also Articles 20,21,22, 23 and 24 of Commission Regulation for more detailed rules*

## **Article 72 – Responsibilities of the Commission (on set up of systems)**

- To satisfy itself that systems set up are compliant before first payment by: a) examination of report and opinion of compliance assessment body – 2 months to make observations and b) monitoring annual control reports and annual opinions and that there has been implementation of corrective measures and withdrawal of reserves where applicable
- Commission audits to verify effective functioning of the management and control systems
- Commission may require Member State to carry out audits

## **Article 73 – Cooperation with the audit authorities of the MS (Single Audit)**

- Coordination of audit plans and methods to make best use of resources and avoid duplication; MS may designate a coordination body, where several AAs exist; Commission and AA shall meet annually to exchange views on annual control report and opinion (Art 62)
- In determining its own audit strategy, Commission shall identify programmes where
  - the opinion on compliance of the system is unqualified or reservations withdrawn
  - audit strategy of AA is satisfactory
  - reasonable assurance on functioning of system

- For those programmes Commission can inform MS that it will rely on AA opinion principally for its assurance **NEW** (*currently the “contract of confidence”*)
- Where there are shortcomings, Commission may require MS to carry out audits (Art 72(3)) or it may carry out audits itself (Art 72(2))

## Article 74 – Proportional control arrangements

### Conditions (cumulative)

1. Community co-financing 40% or less and
2. Total public expenditure EUR 750 million or less

### For all such programmes:

- *Article 58 (general principles) fully applicable*
- MS(AA) need not submit audit strategy
- *Compliance assessment procedure for set-up (Article 70) applies*
- *MS does submit annual audit opinion and control report*
- Commission can inform MS that it will rely on the annual opinion principally for its assurance when the opinion is without reservations; but has the right to carry out audits or request audits to be carried out if opinion on compliance of the system contains no reservations when there is evidence to suggest shortcomings in the system
- MS has option to apply national (and not Community) rules for bodies and procedures to execute: i. functions of MA - 1st level verifications, ii. functions of CA - drawing up and certifying expenditure claims and iii. functions of AA; *See also Article 25 of Commission Regulation for more detailed rules*  
- MS does not have to designate CA or AA because it can determine under national rules who shall perform various functions
- *Outputs remain the same – but MS has greater flexibility on means to produce them*

## Article 88 - Partial Closure **NEW**

- Optional for MS at periods determined by MS;  
Concerns operations “completed” up to 31 December of previous year;  
  
“Completed” = activities carried out and all expenditure of beneficiaries and corresponding public contribution paid
- declaration of partial closure by AA supporting statement of expenditure for operations and declaration according to Art 62(1)(e)(iii) to be sent to Commission – (*models in Annexes VIII and XIV of Commission Regulation*)
- *conservation of documents of operations runs for 3 years following year of partial closure*

- for partial closure the financial corrections are net

## Articles 89 - Conditions of payment of the final balance (Closure)

Commission pays final balance when:

- Payment application sent by 31 March 2017 and includes: i) payment application and statement of expenditure (Art 78)- *see Annex XIV of Commission Regulation*, ii) final implementation report (Art 67) and iii) closure declaration (Art 62(1)(e))
- No infringements under Article 266 of the Treaty as regards operations
- Failure to send above documents results in de-commitment of balance (Art 92)
- Commission gives its opinion to MS on report/closure declaration within 5 months of date of receipt, otherwise deemed accepted
- Commission pays within 45 days from the later of date it accepts final report (Art 67(4)) and date it accepts closure declaration
- Balance to be de-committed within 12 months following payment. Closure of the operational programme is earliest of a) payment of final balance, b) sending of debit note for sums unduly paid by Commission and c) the de-commitment of final balance. Commission shall inform MS of date of closure within 2 months.
- Final balance paid by Commission can be amended within 9 months of date on which it is paid or debit note is issued. Such amendment of balance does not affect closure of programme.
- *AA provides final control report and declaration on validity of the payment claim and legality and regularity of underlying transactions (Report and declaration follow model in Annex VIII of Commission Regulation)*
- *Where opinion is qualified because of deficiencies or level of irregularities, AA gives reasons and estimates impact*

<p><b><i>Note on Programme Negotiations:</i></b></p>
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- |  |
|--|
| <ul style="list-style-type: none"> <li>• <i>Compliant system architecture is a condition of programme approval</i></li> <li>• <i>Emphasis on governance issues in negotiations</i></li> <li>• <i>Information about weaknesses in current systems will be used to avoid recurrence (Internal Audit Service “Final Overview report on Structural Funds” – 8 March 2006)</i></li> </ul> |
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## **(2) GAINING ASSURANCE ON STRUCTURAL FUNDS EXPENDITURE IN THE 2007-2013 PROGRAMMING PERIOD**

### **1. OVERVIEW**

Assurance is expected to increase for the Commission and the European Court of Auditors on the legality and regularity of Structural Fund expenditure in the 2007-13 period due to:

i) the additional elements in the regulations for the 2007-13 programme period (building up assurance in a logical process from the programme adoption through to programme closure and incorporation of single audit approach into regulatory framework), ii) the implementation of the Action Plan towards an Integrated Internal Control Framework, iii) the recommendations made by the IAS, and iv) build on the work done in the current period to improve systems in the Member States.

The main sources of assurance in the 2007-13 period will be as follows (see diagram 1):

- Guarantees obtained during the programme negotiations;
- *Ex ante* assessment of the compliance of the design of the management and control systems;
- Certification of expenditure, and information about irregularities and the withdrawal and recovery of funding;
- Commission's audit work and the power to interrupt or suspend payments and to apply financial corrections;
- Member States' audit work and the reporting of the results with a formal annual opinion;
- Declarations by the audit authority at partial and final closure.

### **2. OBTAINING ASSURANCE ON SYSTEMS PRIOR TO REIMBURSEMENT OF EXPENDITURE**

#### **2.1. Guarantees obtained during the programme negotiations**

The programme negotiations should be virtually completed in 2006. Establishment of the system architecture is a condition of programme approval (Article 37). The audit services of the Structural Funds Directorates General will be consulted early in the negotiations process led by the operational services. They will provide guidance and advice with regard to the requirements of the new legislative framework (chapter 3 and 7 of the aide mémoire). In particular, they will ensure that existing relevant information about weaknesses in the current systems is used to improve the systems so that the weaknesses do not recur in the new programme period, with emphasis being put on the need for good governance (see IAS "Issues to be considered",1). The results of the work done in 2006 under the Action Plan, in particular Action 13 (analysis of the present controls at sector and regional level and the value of existing statements and declarations), will be taken into account in the guidance provided. Summaries per Member State of the weaknesses, deficiencies and gaps identified in the systems during the current period will be provided to the operational units.

## **2.2. Ex ante compliance assessment**

Before submission of the first interim payment application, or at the latest within 12 months of programme approval, the Member State must submit a description of the management and control system, together with a report setting out the results of an independent assessment of the set-up of the systems and an opinion on their compliance with the requirements (Article 71). The compliance assessment covers the general principles of the management and control system, designation of the programme authorities, and the capacity of the programme authorities to perform their functions, such as verifications of legality and regularity by the managing authority, certification of expenditure by the certifying authority, and the delivery of an annual audit opinion by the audit authority. The Commission audit services will examine the compliance assessment reports and opinions and monitor the implementation of corrective measures where opinions are qualified. The Commission will not make interim payments until it is satisfied that there is an unqualified opinion on which it can rely.

## **2.3. Obtaining assurance on legality and regularity of expenditure declared**

### *2.3.1. Certification of expenditure by the Certifying Authority*

The role of the Certifying Authority (currently “Paying Authority”) is maintained in the new programme period. It will certify the expenditure it declares to the Commission for reimbursement as accurate, as resulting from reliable accounting systems, and as compliant with applicable Community and national rules (Article 61). The certification will provide assurance that the first-level checks by management, the foundation of the entire control system, have been properly carried out.<sup>47</sup> Notes on good practice in first-level management checks (action 14a of the Action Plan) and in performance of the certification function for the current period were presented at the Committee for Development and Conversion of the Regions meeting in February to the Member States and will be relevant also for the 2007-13 period. The rules on the reporting of irregularities, recoveries and withdrawals of expenditure from co-financing have also been clarified and rationalised for the 2007-13 period, in a way which will enable the Commission to make better use of the information provided.

### *2.3.2. Commission’s audit work*

In 2008 the Commission audit services will begin to audit the functioning of the new systems. The audit work will be coordinated between the two Directorates General concerned under their joint audit strategy and the results will be shared. Implementation of the recommendations of the IAS and action 9 of Action Plan should ensure the effective coordination and high standard of the audit work undertaken. As proposed by the IAS (“Issues to be considered”, 3), the Directorate General for Regional Policy, in collaboration with the other responsible Commission services, will prepare a report on progress made in the coordination of the audit process.

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<sup>47</sup> The Commission has proposed to introduce into the regulation for the 2007-13 period a requirement for the managing authority to make a declaration in the annual implementation report (Action 5 of the Action Plan), but it has not been accepted by Member States.

The Commission will be able to use its powers to interrupt (Article 91) or suspend (Article 92) payments and to apply financial corrections (Article 99). These powers provide assurance that if there is evidence of irregularities, corrective measures can be applied so that there is no financial loss to the EU budget. Authorising Officers by delegation will be able to interrupt payments.

#### *2.3.3. Member States' audit work*

The Commission is further strengthening the Single Audit approach in relation to the Member States, whose activity is seen as an integral part of the control system. Additional requirements to be introduced to this end for the 2007-13 period are the designation for each programme of a responsible audit authority (Article 59), the submission of an audit strategy which is subject to approval by the Commission services (Article 62), and the annual audit opinion (Article 62). The Member States will be required to carry out audit work in accordance with common standards as laid down in the Commission regulation as the basis for the annual audit opinion on the functioning of the systems (see also action 16c of the Action Plan on coordinating audit standards, error rate reporting, etc). To ensure that the results of national audit work are available for the AAR process, the Commission has proposed bringing forward the submission of the annual control report and audit opinion by six months to the end of the year. The content of annual control reports is being standardised, and will include, among other things, a requirement to report error rates found.

The Commission is also updating the Structural and Cohesion Funds audit manuals (action 14b). Another measure which the Commission has proposed to this end is the introduction into the regulations for the new period of an obligation on Member States that have more than one audit authority to designate a central coordinating body for audit matters, in accordance with action 5 of the Action Plan. It is uncertain whether Member States, particularly those with a federal structure, will accept this proposal.

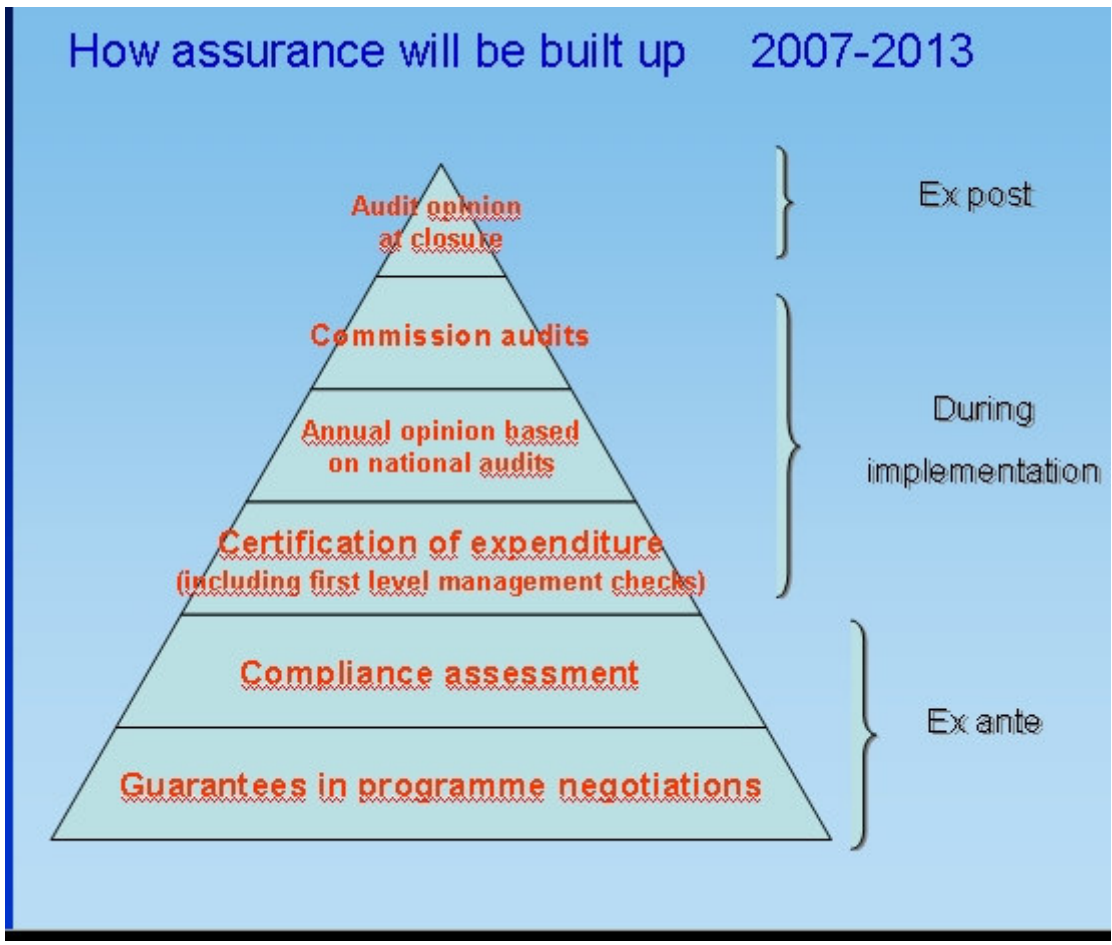
#### *2.3.4. Audit opinions at partial and final closure*

The requirements concerning the audit opinion to be provided at the closure of a programme are carried forward from the 2000-06 period (Article 62). The fact that the audit authority will have formal responsibility for all audit work carried out and will provide an annual opinion on the effective functioning of the management and control systems should strengthen the level of assurance provided at closure. The new possibility of the partial closure of programmes for expenditure up to the end of a given year in the course of the programme period, for which an audit opinion will also be required (Article 88), should reduce the burden on the audit authority at the end of the programme period.

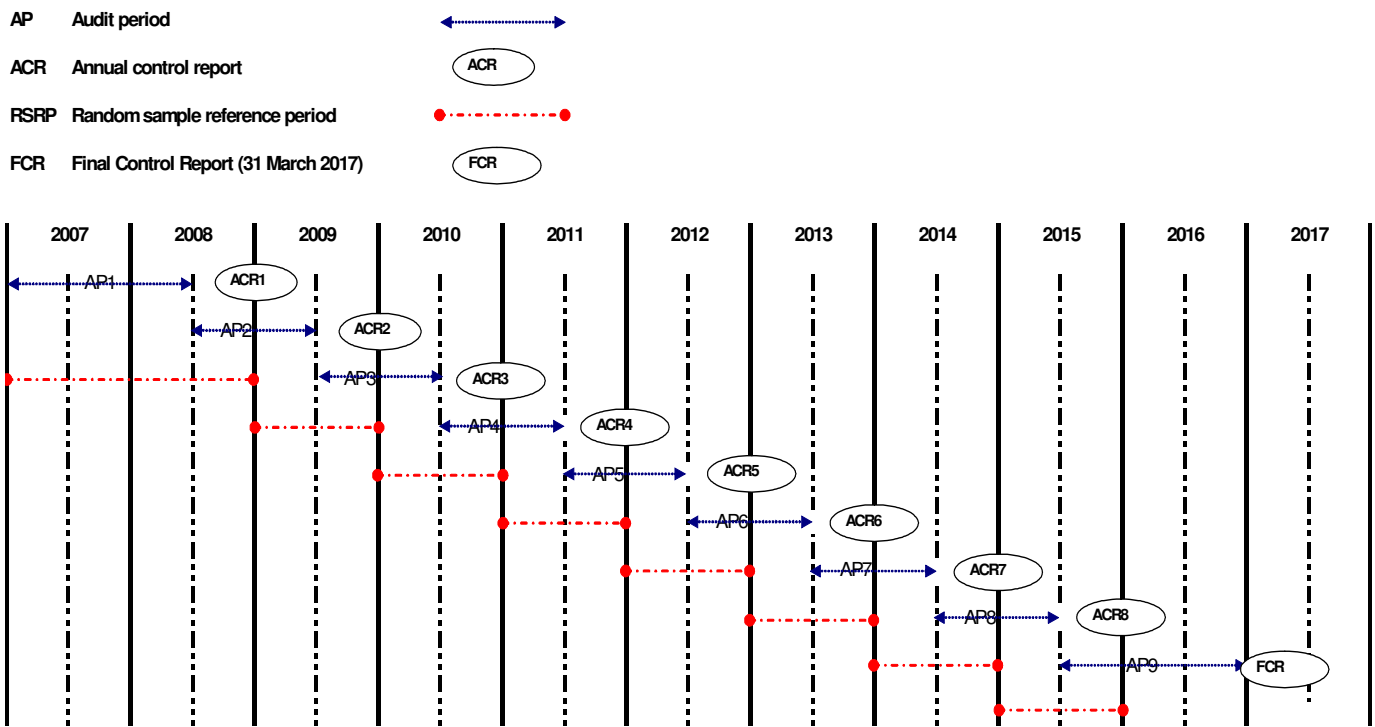
### **3. CONCLUSION**

On the basis of the implementation of the above framework, the Structural Funds DGs will be able to demonstrate that reasonable assurance can be obtained on the effective functioning of the internal control structures.

**Diagram 1 – Building Assurance**



**Diagram 2 - Time schedule for reporting by Audit Authority**



# ANNEX 9: NOTE ON N+2; LETTER SENT TO NON-EURO MEMBER STATES ON THE USE EURO

## 1) Document describing N+2 implementation<sup>48</sup>



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR REGIONAL POLICY

CDRR-03-0024-01-EN  
Brussels, 9 July 2003

### INFORMATION NOTE FOR THE ATTENTION OF THE CDCR

#### Treatment of major projects and suspension of state aid Application of the n+2 rule

##### 1- Regulatory provisions applied by the Commission:

- Article 31(2) of Regulation (EC) No 1260/1999 provides for exemption from application of the n+2 rule for the part of a commitment affected by a subsequent Commission decision. It stipulates that: *"The Commission shall automatically decommit any part of a commitment which has not been settled by the payment on account or for which it has not received an acceptable payment application, as defined in Article 32(3), by the end of the second year following the year of commitment or, where appropriate and for the amounts concerned, following the date of a subsequent Commission decision necessary in order to authorise a measure or an operation ... ; the contribution from the Funds to that assistance shall be reduced by that amount."*
- The communication on the n+2 rule does not lay down detailed rules of application. It states that *"If a further Commission decision is needed to authorise a certain measure or operation (an aid regime, or major project for example), then the commitment is made for the full annual tranche of the programme, including the amounts which cannot be reimbursed and related to the operation or measure which still needs further approval. The part of the commitment corresponding to these measures or operations is treated separately under the n+2 rule: the amount concerned is left open and is not subject to decommitment until the end of the second year after the subsequent decision is taken. The Member State must provide the information on the total cost and the planned implementing period for this purpose."*

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<sup>48</sup> This note is being adapted in the light of the new regulatory framework for 2007-2013.



- The Directorates-General responsible for the Structural Funds apply the following rule: in the absence of an annualised financing plan specific to the operation or measure, the amount of the annual commitment relating to the operation which is concerned is the amount of the measure or operation divided by its scheduled duration (case of measures or operations newly introduced) or by the duration of the programme (case of measures or operations foreseen in the initial decision). Automatic decommitment takes place at the end of the second year following that of the decision for the total volume suspended, without extension for the remaining amounts of the measure or operation allocated to subsequent years.

## **2- Application to major projects and to aid schemes:**

Application of **exemption** from the n+2 rule by reason of subsequent Commission decision occurs mainly with major projects and aid schemes.

Let us take the example of a 2000-06 programme including a major project or an aid scheme on which a Commission decision was taken in 2003. Under Article 31(2) of Regulation (EC) No 1260/1999, the amount concerned by that major project or aid scheme **in terms of commitments** must be covered by payment requests **within two years** following the date of a decision taken subsequently by the Commission, i.e. in this instance within two years following the decision on the major project or the aid scheme. **The pre-2003 portion of commitments** affected by the subsequent Commission decision must be **used up by the end of 2005**.

**A major project** may have started before the date of adoption of the subsequent Commission decision approving the rate of the Commission contribution to the project (2003 in our example). As a general rule, expenditure linked to a major project and incurred before adoption of the Commission decision approving the rate of Community part-financing for the project cannot be presented to the Commission for part-financing until after adoption of the decision.

**An aid scheme**, whether provided for in a programme or more generally in a programme complement, must not be implemented before the Commission decision. The latter does not automatically include the aid scheme's financing plan or duration. In the absence of a specific financing plan the Commission allocates the cost of the major project or of the aid schemes foreseen in the initial decision approving the programme proportionally to the programming period. In case of the notification of an aid scheme or of the formal submission of a major project (containing the information mentioned in article 26§1 of regulation n° 1260/99) not foreseen initially, the financing plan is charged to the open and valid commitments.

The national authorities are free to adjust the financing plans for major projects and aid schemes. Such adjustments must be compatible with the decision; in particular, the amount allocated to the major project or aid scheme must not exceed that provided for annually in the programme priority containing the major project or aid scheme.

### 3- Examples:

*Example of a major project or an aid scheme of €100 million (2001-05) in a programme of €700 million. The decision on the rate of Community contribution to this major project was adopted in 2003:*

#### **1- Proportional profile of commitments**

Commitments	Initial decision on the programme			Subsequent decision on the MP or the AS			
Years	2000	2001	2002	2003	2004	2005	2006
Programme commitment	100	<b>100</b>	<b>100</b>	<b>100</b>	100	100	100
Portion allocated to major project or aid scheme		<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	<b>20</b>	-
Years n+2	2002	2003	2004	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Amounts at risk of automatic decommitment	100	<b>80<sup>49</sup></b>	<b>80<sup>50</sup></b>	<b>100+20+20<sup>51</sup></b>	<b>100</b>	<b>100</b>	<b>100</b>
<b>n+2 accumulated payments threshold</b>	100	180	260	400	500	600	700
n+2 accumulated payments threshold without major project or aid scheme	100	200	300	400	500	600	700

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<sup>49</sup> 100 from 2001 - 20 from 2001 for the major project or the aid scheme.

<sup>50</sup> 100 from 2002 - 20 from 2002 for the major project or the aid scheme.

<sup>51</sup> 100 from 2003 + 20 from 2001 for the major project + 20 from 2002 for the major project or the aid scheme.

## 2- Specific profile of commitments

	<b>Initial decision on the programme</b>			<b>Subsequent decision on the MP or the AS</b>			
<b>Years</b>	2000	2001	2002	2003	2004	2005	2006
Programme commitment	100	<b>100</b>	<b>100</b>	<b>100</b>	100	100	100
Portion allocated to major project or the aid scheme	-	<b>70</b>	<b>30</b>	-	-	-	-
<b>Years n+2</b>	2002	2003	2004	<b>2005</b>	2006	2007	2008
Amounts risking automatic decommitment	100	<b>30<sup>52</sup></b>	<b>70<sup>53</sup></b>	<b>100+ 70+30<sup>54</sup></b>	<b>100</b>	<b>100</b>	100
<b>n+2 accumulated payments threshold</b>	100	130	200	400	500	600	700
n+2 accumulated payments threshold without major project or aid scheme	100	200	300	400	500	600	700

The above examples show that the accumulated commitments are identical two years after a subsequent Commission decision (in the case of exemption from the n+2 rule by reason of a subsequent Commission decision and in the case of no subsequent decision).

The accumulated payments threshold enabling avoidance of automatic decommitment may be reached by payment requests presented under all types of project part-financed under the programme.

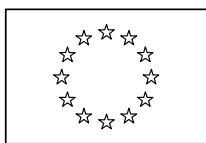
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<sup>52</sup> 100 from 2001 - 70 from 2001 for the major project or the aid scheme.

<sup>53</sup> 100 from 2002 - 30 from 2002 for the major project or the aid scheme.

<sup>54</sup> 100 from 2003 + 70 from 2001 for the major project + 30 from 2002 for the major project or the aid scheme.

## 2) Letter to non-euro Member States sent on 22 May 2006 on the use of euro



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL POLICY

The Director-General

Brussels,  
A3/AL/ez D(2006) 130151

**Subject: Structural Funds and Cohesion Fund: Interpretation of the article 2 of the Commission regulation (EC) n° 643/2000 of 28 March 2000 on arrangements for using the euro for the purposes of the budgetary management of the Structural Funds and of the article E of the annex II of the modified Council regulation (EC) no°1164/94 of 16 May 1994 establishing a Cohesion Fund**

Sir,

The Commission would like to clarify to Member States the interpretation of article 2, paragraph 2 of the Commission Regulation (EC) n° 643/2000 and of the article E of the annex to the Council regulation (EC) n°1164/94 on arrangements for using the euro for the purposes of the budgetary management of the Structural Funds and the dispositions of the Cohesion Fund which both determine the day of reference for the application of the euro exchange rate in the budgetary management of the Structural Funds and the Cohesion Fund.

The current note provides necessary clarifications for all the Member States which do not have the euro as their currency on the date of the payment application. After receipt of this note they should use for conversion into euro the accounting exchange rate of the month during which the expenditures were recorded in the accounts of the paying authority responsible for the contribution concerned.

This accounting exchange rate published on the website « InforEuro » is derived from the market exchange rate of the last but one day of the preceding month quoted by the European Central Bank. The same exchange rate is published in the Official Journal of the European Union, series C.

The Commission requests the Member States to use for conversion into euro only the monthly euro exchange rates which are published on the website « InforEuro »<sup>55</sup>.

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<sup>55</sup><http://ec.europa.eu/budget/inforeuro/>

The Commission would like to announce in this respect that the Group of structural actions of the Council has agreed on the euro conversion rate in future regulations of Funds. The exchange rate will also be the monthly accounting exchange rate.

The Commission does not request those Member States which have used until the receipt of this note the euro exchange rate of the last but one working day of the month preceding the month for which the rate was established to correct their expenditures. In fact, the amounts of declared expenditures have been calculated in good faith when applying one or another exchange rate. The current note represents a clarification at this stage of the programming period. The differences resulting from application of a different exchange rate would not be material.

Yours faithfully,

Graham Meadows