



COMMISSION OF THE EUROPEAN COMMUNITIES

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2004/0169 (CNS)

Proposal for a

COUNCIL REGULATION

European Fisheries Fund

(presented by the Commission)

{SEC(2004) 965}

EXPLANATORY MEMORANDUM

1. The legal basis for Community action under the common fisheries policy is Title II of the Treaty establishing the European Community, and in particular Article 37.
2. From its inception therefore the common fisheries policy has had a significant structural component. Over the past 20 years, the structural policy for fisheries has brought about a modernisation of the fisheries sector as a whole. These efforts need to be continued, particularly for the new Member States, paying particular attention to maintaining quality employment and a satisfactory level of economic viability in the sector, adapting capacity to available fisheries resources, the quest for high-quality products, the introduction of more environment- and resource-friendly techniques, not forgetting the ongoing improvement of living and working conditions.
3. The economic, social, environmental and political conditions are constantly changing. The Community instruments providing assistance will have to adapt in line with the tasks assigned to them in order to keep pace with the demands arising from changes in the fisheries and aquaculture sector, world markets, the use of new technologies, dwindling fisheries resources, the need for sustainable, environment-friendly fishing, the worsening quality of aquaculture waters, regional development policies and consumer demand.
4. In pursuing the specific objectives of the common fisheries policy, the Community has to ensure the long-term future of fishing activities and the sustainable exploitation of resources and thus to make essential structural adjustments to strike a balance between resources and fishing capacity. The Community needs to be given the means to speed up the elimination of surplus capacity and, as a number one priority, to oversee stock recovery or management plans and other emergency measures in an economically efficient and socially equitable manner.
5. The Community is to support more resolutely the development and dissemination of fishing techniques that are more compatible with the marine environment and fisheries resources, promote investment in selective fishing gear, establish boxes or any other private or joint initiatives to encourage selective fishing going beyond the obligations laid down in the Community rules.
6. The development of the aquaculture sector also represents real potential for the creation of remunerative jobs and new economic activities. The aquaculture sector should be included in a perspective for the sustainable development of quality products while at the same time ensuring that the environmental impact is reduced.
7. With a view to protecting fisheries resources, the greatest possible value should be added to catches and products, limiting all wastage and discards, by means of a modern marketing policy and the development of local processing facilities for fishery and aquaculture products. Community support for such a move aimed in particular at making the greatest possible quantity of products fit for human consumption will be targeted at micro and small enterprises.
8. In these times of great changes in the fisheries sector, steps have to be taken not only to preserve the human capital of the fishing industry, but also to acquire all the new

know-how necessary to contribute to the sustainable exploitation of fisheries resources and the development of aquaculture, in particular by means of providing those engaged in the fisheries sector with suitable training throughout their working lives, bringing younger people in and promoting equal opportunities between men and women.

9. The socio-economic fabric of the coastal areas involved in fishing will be affected, and they will have to cope with the constraints arising from, among other things, changes in the fishing and aquaculture sector, developments on world markets, dwindling fisheries resources and the need to exploit natural resources and the environment in a sustainable manner, paying particular attention to the quality of fishing and aquaculture waters. The Community must be able to provide accompanying measures in conjunction with the conversion of areas affected by the restructuring of the fisheries sector. However, it will be necessary to restrict the areas eligible for this assistance: the Fund is not designed to cover all the coastal and lake areas of the Community.
10. To take greater account of the special characteristics of fishing activity, connected with the social structure of the fisheries sector and the structural and natural disparities between the various areas concerned with fishing, the European Fisheries Fund should be able to provide more direct assistance where necessary under a policy for the sustainable economic development of coastal areas, fully in line with and complementary to the other Community instruments, particularly the Funds devoted to structural change and convergence .
11. Having regard to the diversity of the situations and of the areas throughout the Community and to the principle of subsidiarity, assistance from the Fund for the development of coastal areas will have to form part of an integrated local approach centred on a relevant territorial strategy and adapted to the local situation. Its design and implementation will be as decentralised as possible, preference being given to the involvement of private actors on the ground and a bottom-up approach.
12. The European Fisheries Fund, like the FIFG, is to play a dual role in adding Community value. Firstly, as a financial instrument forming an integral part of the common fisheries policy, it is to accompany resource management measures and help adjust the structures of the production sector and the CFP monitoring tools. Secondly, it is to maintain a concern for cohesion vis-à-vis the populations and areas engaged in fishing activities.
13. As proposed here, the European Fisheries Fund will be able to play a greater role in the development and maintenance of the economic and social fabric of communities involved in fishing, for which the economic alternatives remain limited, while at the same time pursuing the objectives which the Treaty sets for the CFP.
14. The Fund will keep the same foundations and principles, as other Structural Funds, of multi-annual programming and monitoring, partnership, part-financing, subsidiarity and concentration on the least-favoured regions and those most under threat from the impact of fish stock recovery measures.
15. Each Member State will draw up a national strategic plan setting out its specific goals and priorities for Fund action, in the light of the Community strategic

guidelines for the common fisheries policy. This strategic plan, which indicates the interventions and the financial contribution from the Fund and the other needed resources, will serve as a reference frame for drawing up the operational programmes.

16. To make action by the Fund more effective, the proposed approach is based on simplified instruments, with a single Regulation and a single Fund covering Community assistance. The operational programmes will also concentrate on a limited number of priorities, omitting all the technical details that might make them difficult to follow and implement.
17. The five priority axes are “measures for the adjustment of Community fishing fleet,” “aquaculture, processing and trade of fisheries and aquaculture products”, “measures of collective interest”, “sustainable development of fishing coastal zones” and “technical assistance”.
18. The implementation of the Fund shall be carried out using shared management as defined in the Financial Regulation and is based on the principles of proportionality and subsidiarity. Major components of simplification and decentralisation are included in the proposal, in particular:
 - The present three stage programming process is replaced by a two-stage approach, the first being strategic in nature, the second operational. In addition, the operational programmes will no longer as at present be backed up by programming complements which list the detailed measures but only establish the main priorities for assistance.
 - For financial management, the payment system has been simplified and payments will be made at priority level only and no longer at measure level. Co-financing will also be determined at priority level.
 - The Commission shall only require Member States to provide what is necessary for reasonable assurance of sound financial management which enables it to assume its responsibilities for implementing the Community budget. The notion of proportionality is also taken into account for the purposes of evaluation, inspection, reporting and membership of the committee.
 - Eligibility rules shall be defined at national level, except for a short negative list. The proposal also introduces the possibilities of partial closure.
 - In conclusion, the regulatory framework is radically simplified since this draft regulation shall replace or modify the provisions of current Regulations (EC) n° 1260/1999, (EC) n° 1263/1999, (EC) n° 2792/1999, (EC) n° 366/2001.
19. The financial allocation for the Fund under the Financial Perspectives proposed by the Commission for the 2007-2013 period¹ is EUR 4 963 million for an enlarged

¹ Communication from the Commission to the Council and the European Parliament. Building our common Future. Policy challenges and Budgetary means of the Enlarged Union 2007-2013. COM(2004) 101 final of 10.2.2004.

Europe of 27, this is roughly in line with the amount allocated for the Europe of 15 in the 2000-2006 period (EUR 3 7000 million). For the distribution of financial resources between Member States the Commission intends to apply the method based on objective criteria used at the Berlin Council in 1999 for the “Convergence” objective by taking into account the need to show fairness to regions affected by the “statistical effect” of enlargement. Resources allocated to regions not eligible for the Convergence objective will be allocated by the Commission between Member States on the basis of the following objective criteria, :: the size of the fisheries sector in the Member State concerned, the scale of adjustment needed to the fishing effort, the level of employment in the fisheries sector and the continuity of ongoing actions.

20. Consultation of the public and stakeholders on the future instrument for fisheries instrument 2007-2013 took place at a European conference held from 27 to 29 May 2004 in Bundoran, Donegal County, Ireland. This conference enabled some 300 participants to express their opinions. They represented not just the whole sector and competent government departments but also consumers and non-governmental organisations. The conference conclusions have where possible been included in this proposal for a Regulation.
21. The impact assessment of the proposal states that several effects are expected from EFF assistance, in particular, a contribution to the effort to achieve a balance between available resources and fishing levels, a degree of compensation for the socio-economic difficulties thrown up by the trends in activity in the sector, and the restructuring it must face, a contribution to the protection of the marine environment and to the improvement of selectivity of fishing gear, improvements to safety on board vessels, working conditions, health and product quality.

Proposal for a

COUNCIL REGULATION

European Fisheries Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Whereas:

- (1) The development of the Community fishing fleet must be regulated in particular according to the decisions that the Council and the Commission are called upon to take by virtue of Chapter II of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy⁶;
- (2) The objective of the common fisheries policy should be to provide for sustainable exploitation of living aquatic resources and of aquaculture in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner ;
- (3) The scope of the common fisheries policy extends to the conservation, management and exploitation of living aquatic resources and aquaculture, as well as the processing and marketing of fisheries and aquaculture products in so far as those activities are practised on the territory of Member States, in Community waters or by Community fishing vessels or nationals of Member States ;

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ OJ L 358, 31.12.2002 p. 59.

- (4) Under Article 33(2) of the Treaty account must be taken of the particular nature of the activity which results from the social structure of the sector and from structural and natural disparities between the various regions involved in fishing activities ;
- (5) The sustainable development component of the common fisheries policy has been integrated into the rules governing the Structural Funds since 1993. Its implementation should be pursued in the context of sustainable development by means of the European Fisheries Fund ;
- (6) The sustainable development objective of the CFP cannot be adequately met by the Member States given the structural problems encountered for the development of the fisheries sector and the restrictions on financial resources available to member States in an enlarged Union. It can be better achieved at Community level by providing multi-financial financing at Community level focused on the relevant priorities. In accordance with the principle of subsidiarity enshrined in Article 4 of the Treaty, the Community can enact measures ;
- (7) The common fisheries policy must incorporate the Community's priorities for sustainable development as defined at the European Councils in Lisbon and Göteborg ;
- (8) Programming should ensure coordination of the Fund with the other Funds geared to sustainable development and with the Structural Funds and the EIB, that coordination also extending to combining grants and loans ;
- (9) The activity of the Fund and the operations it helps finance should be compatible with the other Community policies and comply with all Community legislation ;
- (10) Action by the Community should be complementary to that carried out by the Member states or seek to contribute to it and in order to ensure significant added value, partnership should be strengthened. This concerns the regional and local authorities, the other competent authorities, including those responsible for the environment and for the promotion of equality between men and women, the economic and social partners and other competent bodies. The partners concerned should be involved in the preparation, monitoring and evaluation of assistance ;
- (11) The Community may take measures in accordance with the subsidiary principle laid down in Article 5 of the Treaty and in accordance with the proportionality principle laid down in that Article. This Regulation does no more than is required to achieve that goal ;
- (12) There can be a differentiation in the resources used by the Commission and the Member States in order to simplify the implementation of the Funds and to clarify the responsibilities of the Member States and the Commission ;
- (13) Under Article 274 of the Treaty, Member States are to cooperate with the Commission to ensure compliance with the principles of sound financial management. To that end this Regulation specifies the conditions allowing the Commission to exercise its responsibilities for the execution of the general budget of the European Communities ;
- (14) If the activities of the Fund are to be effective and transparent, the responsibilities of the Member States and of the Community should be precisely defined. Those

responsibilities should be specified for each stage of programming, monitoring, evaluation and inspection. In accordance with the principle of subsidiarity, and without prejudice to the powers vested in the Commission, implementing and inspecting assistance should be primarily the responsibility of the Member States ;

- (15) Articles 2 and 3 of the Treaty guarantee the elimination of inequalities and the promotion of equality between women and men ;
- (16) The Commission should establish an indicative breakdown of available commitment appropriations using an objective and transparent method, with a significant concentration on the regions covered by the Convergence Objective ;
- (17) The appropriations available under the Fund should be indexed on a flat-rate basis for programming and that indexation should, if necessary, be subject to a technical adjustment no later than 31 December 2010 ;
- (18) In order to strengthen the leverage effect of Community resources by favouring as far as possible recourse to private sources of financing and to take better account of the profitability of the operations, the forms of assistance available from the Funds should be diversified and the rates of assistance differentiated with a view to promoting the Community interest, encouraging the use of a wide range of financial resources and limiting the contribution of the Funds by encouraging the use of appropriate forms of assistance ;
- (19) To reinforce the strategic content of the common fisheries policy in line with the Community's priorities for the sustainable development of fisheries and aquaculture, the Council, acting on a proposal from the Commission, should adopt strategic guidelines defining the priorities for assistance under the common fisheries policy ;
- (20) In order to streamline programming procedures, the responsibilities of the Commission must be distinguished from those of the Member States. Provision should therefore be made for the Commission, acting on a proposal from the Member States, to adopt the strategies and development priorities that are to govern the programming as well as the size of the financial contribution from the Community, and the implementing arrangements linked to them, while the Member States should decide on their application ;
- (21) The need for simplification and decentralisation, programming and financial management should be met at the level of the priorities alone, with programme complements and Community support frameworks being discontinued ;
- (22) The programming system should be simplified by applying a single programming period of seven years. To that end the forms of assistance and the number of assistance schemes should be limited and as a general rule they should take the form of one operational programme per Member State ;
- (23) Criteria should be laid down for defining eligible areas. To that end, the identification of the priority regions and areas at Community level should be based on the common system of classification of the regions, established by Regulation (EC) No 1059/2003

of the European Parliament and the Council of 26 May 2003 related on the establishment of a common classification of territorial units for statistics (NUTS) ⁷;

- (24) The need to provide accompanying measures for the CFP, in particular, reducing its socio-economic impact by implementing a coastal zone development policy ;
- (25) Having regard to the diversity of situations and areas throughout the Community and the principle of subsidiarity, the policy for the development of inshore fishing areas should form part of an integrated approach centred on an appropriate territorial strategy and adapted to the local context, should be as decentralised as possible, give preference to the participation of actors on the ground, be based on a bottom-up approach, allow modest-scale operations to be considered and ensure substantial participation of private-sector actors ;
- (26) The adoption by the Council of multi-annual recovery plans is an absolute priority and they should be accompanied by fishing effort adjustment plans under the Fund ;
- (27) The non-renewal of a fisheries agreement between the Community and a third country or a substantial cut in fishing opportunities under an international arrangement should also give rise to multi-annual fishing effort management plans aimed at adjusting the fleet to the new situation ;
- (28) Provisions should be laid down for adjusting fishing effort in connection with the adoption of emergency measures by the Member States or the Commission as provided for in Articles 7 and 8 respectively of Regulation (EC) No 2371/2002 ;
- (29) The Community fleet should be reduced in order to adapt it to the available and accessible resources ;
- (30) Socio-economic accompanying measures will be needed to implement the restructuring of the fishing fleets ;
- (31) Detailed rules should be laid down for granting allowances and financial compensation to fishermen and vessel owners, in cases of temporary cessation of activity or of technical restrictions being applied to certain equipment on board vessels or certain fishing methods ;
- (32) It is vital for the fisheries sector that a sustainable balance be achieved between aquatic resources and their exploitation, having due regard to the environmental impact. Appropriate measures should therefore be laid down not only to safeguard the food chain but also for aquaculture and the processing industry ;
- (33) Detailed rules should be laid down for granting aid to aquaculture, processing and marketing of fisheries and aquaculture products, while ensuring that these sectors retain economic viability; for this purpose, it is necessary to identify a limited number of priority objectives for assistance and to focus the structural aid on micro and small enterprises ;

⁷ OJ L 154, 21.6.2003, p. 1.

- (34) Collective action to be undertaken by the industry should also be included under Fund measures ;
- (35) By way of technical assistance the Fund should provide support for evaluations, studies, pilot projects and exchanges of experience in order to promote innovative approaches and practices for simple and transparent implementation ;
- (36) Such decentralised implementation of the operations of the Fund by the Member States should provide sufficient guarantees as to the details and quality of implementation, the results of operations and their evaluation and sound financial management and its supervision ;
- (37) The effectiveness and impact of the operations of the Structural Funds also depend on improved and more thorough evaluation. The responsibilities of the Member States and the Commission in this regard and arrangements to ensure the reliability of evaluation should be laid down ;
- (38) It is appropriate to evaluate assistance for the purposes of preparation, review and to assess its impact and to include the evaluation process in the follow-up of assistance; to this end, the aims and content of each stage of evaluation need to be defined ;
- (39) In the interests of a good working partnership and the proper promotion of Community assistance, the broadest possible information and publicity about it should be provided for. The authorities responsible for managing assistance should be responsible for this aspect and for keeping the Commission informed of measures taken ;
- (40) In order to guarantee efficient and correct implementation, the obligations of the Member States should be laid down with regard to management and supervision systems, the certification of expenditure and the prevention, detection and correction of irregularities and infringements of Community law ;
- (41) A managing authority, a certifying authority and an inspection authority should be designated for each assistance package and their responsibilities specified. The responsibilities in question should relate primarily to sound financial implementation, the organisation of evaluation, the certification of expenditure actually incurred by the beneficiaries, inspection and compliance with obligations regarding publicity and under Community law. Provision should be made for regular meetings between the Commission and the national authorities concerned to monitor the assistance ;
- (42) It should be stipulated that the steering committee is a body appointed by the Member State supervising assistance, checking on how it is being managed by the managing authority, ensuring compliance with its own guidelines and implementing rules and reviewing evaluations ;
- (43) Indicators and annual reports on implementation are essential for monitoring and should be better defined so they reflect reliably the progress of assistance schemes and the quality of programming ;
- (44) Without prejudice to the Commission's existing powers as regards financial control, cooperation between the Member States and the Commission in this field should be reinforced ;

- (45) The rules and procedures governing commitments and payments should be simplified so that budget commitments have to be made once a year in accordance with the multi-annual financial perspective and with the financing plan for assistance, whilst payments should be made in the form of an advance followed by the reimbursement of actual expenditure incurred. In accordance with established case law, any interest earned on the advance payment should be regarded as resources for the Member State concerned, and in order to strengthen the impact of the Funds, it should be allocated to the same purpose as the advance payment itself ;
- (46) Sound financial management should be assured by providing that expenditure is to be duly justified and certified, and by linking payments to compliance with essential responsibilities as to the monitoring of programming, financial controls and the application of Community law ;
- (47) To ensure sound management of Community resources, improvements should be made to the forecasting and implementing of expenditure. To that end the Member States should regularly send the Commission their forecasts of the use of Community resources, and any delays in financial implementation should give rise to repayment of advances and to automatic de-commitments ;
- (48) One way of ensuring that the operations of the Structural Funds are effective is efficient monitoring. Monitoring should be improved and the relevant responsibilities better defined. In particular a distinction should be made between management functions and monitoring functions ;
- (49) For the sake of effectiveness of measures part-financed by the Fund, an advance of 7% should be allocated over two years according to availability ;
- (50) In the interests of sound financial management and efficiency, the de-commitment rule (N+2) should apply ;
- (51) Under Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁸, the measures required for the implementation of this Regulation should be adopted either by the advisory procedure under Article 3 of that Decision or, in the case of management measures, under the management procedure in Article 4 ;
- (52) Detailed transitional provisions should be laid down to allow preparation of new programming immediately on entry into force of this Regulation and to ensure that assistance to Member States is not interrupted pending the production of plans and assistance schemes in accordance with the new system ;
- (53) Council Regulation (EC) N° 1260/1999 of 21 June 1999 and (EC) N° 2792/1999 of 17 December 1999 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products as well as other provisions should be repealed. However, for the proper execution of assistance, operations and projects approved up to 31 December 2006, the repealed provisions should remain applicable to that end.

⁸ OJ L184, 17.7.1999,p. 23.

HAS ADOPTED THIS REGULATION:

TITLE I

OBJECTIVES AND GENERAL RULES ON ASSISTANCE

CHAPTER I **Scope and definitions**

Article 1

Scope

This Regulation establishes a European Fisheries Fund (hereinafter referred to as “the Fund”) and defines the framework for Community support for the sustainable development of the fisheries sector and coastal fisheries zones.

Article 2

Geographical scope

1. The measures in this Regulation apply in the entire territory of the European Union.
2. By derogation from paragraph 1, for assistance provided under chapter IV of title IV, relating to the sustainable development of coastal fisheries zones, the Member States shall select the eligible areas on the basis of the criteria laid down in Article 42(3) and (4).

Article 3

Definitions

For the purpose of this Regulation

- (a) “fisheries sector” means the sector of the economy including all activities of production, processing and marketing of fisheries production ;
- (b) “fisherman” means any person engaging in their main occupation, as recognised by the Member State, on board an operational fishing vessel ;
- (c) “person engaged in the fisheries sector” means any person engaging in their main occupation in the fisheries sector defined in Article 1 ;

- (d) “fishing vessel” means a fishing vessel within the meaning of Article 3 of Regulation (EC) No 2371/2002 ;
- (e) “aquaculture” means the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment; the organisms remain the property of a natural or legal person throughout the rearing or culture stage, up to and including harvesting ;
- (f) “micro and small enterprise” means a micro or small enterprise as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁹ ;
- (g) “operational programme” (OP) means the single document drawn up by the Member State, approved by the Commission, containing a coherent set of priorities ;
- (h) “programming” means the process of organisation, decision-making and financing in several stages intended to implement, on a multi-annual basis, the joint action by the Community and the Member States to achieve the priority goals of the Fund ;
- (i) “priority axis” means one of the priorities of the strategy in an operational programme comprising a group of measures which are related and defined in the Community strategic guidelines ;
- (j) “measure” means a set of actions aimed at implementing a priority axis ;
- (k) “operation” means a project implemented by one or more beneficiaries ;
- (l) “beneficiary” means the operator, body or firm, whether public or private, responsible for initiating and/or implementing the operations. In the context of aid schemes under Article 87 of the Treaty beneficiaries are public or private firms carrying out an individual action and receiving public aid ;
- (m) “public expenditure” means any public expenditure by the national authorities, territorial authorities or from the general budget of the European Communities or any similar expenditure including expenditure by bodies governed by public law within the meaning Directive 2004/18/EC of the European Parliament and the Council¹⁰ ;
- (n) “Convergence objective” means the objective defined in the article 3(2) of (EC) regulation n° .../2004 of Council laying down the general provisions on Structural Funds and the Cohesion Fund¹¹.

⁹ OJ L 124, 20.5.2003, p. 36.

¹⁰ OJ L 134, 30.4.2004, p. 114.

¹¹ OJ L [...], [...], p. [...].

CHAPTER II

Objectives and missions

Article 4

Objectives

Assistance under the Fund shall aim to:

- (a) support the common fisheries policy so as to ensure exploitation of living aquatic resources in a way which creates the necessary conditions for sustainability in economic, environmental and social terms ;
- (b) promote a sustainable balance between resources and the capacity of the Community fleet ;
- (c) strengthen the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector ;
- (d) foster the protection of the environment and natural resources ;
- (e) encourage sustainable development and the improvement of the quality of life in marine, lake and coastal areas affected by fishing and aquaculture activities ;
- (f) promote equality between women and men in the development of the fisheries sector and coastal fishing areas.

Article 5

Missions

Support for the fisheries sector shall be provided by a European Fisheries Fund (hereafter called the Fund or EFF). The measures implemented under this Regulation shall contribute to attaining the general objectives set out in Article 33 of the Treaty and the objectives defined as part of the common fisheries policy (CFP). They shall accompany and supplement, where necessary, the other Community instruments and policies.

CHAPTER III

Principles of assistance

Article 6

Complementarity, consistency and compliance

1. The Fund shall provide assistance which complements national, regional and local measures, integrating into them the priorities of the Community.
2. The Commission and the Member States shall ensure that assistance from the Funds is consistent with the activities, policies and priorities of the Community.
3. The Member States ensure that operations financed by the Fund comply with the provisions of the Treaty and of acts adopted under it, and with Community policies and actions, in particular relating to the rules on competition and the award of public contracts and the protection and improvement of the environment.
4. Operations financed by the Fund shall not contribute directly or indirectly to increasing fishing effort.
5. The provisions of article 16 of Regulation (EC) n° 2371/2002 shall apply.

Article 7

State aids

1. Without prejudice to paragraph 2, Articles 87, 88 and 89 of the Treaty shall apply to aid granted by the Member States to enterprises in the fisheries sector.
2. Articles 87, 88 and 89 of the Treaty shall not apply to compulsory financial contributions from the Member States to measures part-financed by the Community and provided for as part of an operational programme as referred to in chapter 1, title III.
3. Measures involving public financing going beyond the provisions of this Regulation concerning compulsory financial contributions, as provided for in paragraph 2, shall be dealt with as a complete package on the basis of paragraph 1.

Article 8

Partnership

1. Assistance from the Fund shall be decided by the Commission within the framework of close cooperation, hereinafter "partnership", between the Commission and the Member State. The member State organises, in accordance with current national rules and practices, a partnership with the authorities and bodies which it designate, namely:
 - (a) the competent regional, local 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.
2. The Member State shall designate the most representative partners at national, regional and local level and in the economic and social or other spheres (hereinafter "partners"). The Member State shall establish a broad and effective involvement of all the appropriate bodies, in accordance with national rules and practices, taking into account the need to promote equality between men and women and sustainable development thought the integration of environmental protection and improvement requirements.
3. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner category.
4. The partnership shall cover preparation and monitoring of the national strategic plan provided for in Article 15 as well as preparation, implementation and monitoring of the operational programmes. Member States shall involve each of the appropriate partners in the various programming stages within the time limit set for each stage.

Article 9

Subsidiarity and proportionality

1. Implementation of the operational programmes shall be the responsibility of Member States. That responsibility shall be exercised in accordance with the management and control requirements laid down in this Regulation at the appropriate territorial level.
2. The means employed by the Commission and the Member States may vary according to the size of the Community contribution. Such variation shall apply in particular to the means used for evaluation, inspection, and participation by the Commission in the Monitoring Committees provided for in article 61 and for the annual reports on operational programmes.

Article 10

Shared management

1. The Community budget allocated to the Fund shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 53 of Council Regulation (EC) No 1605/2002. However, the budget for technical assistance referred to in Article 45(1) is implemented by the Commission within the framework of direct management. The Member States and the Commission shall ensure compliance with the principles of sound financial management in accordance with Article 274 of the Treaty.
2. The Commission shall exercise its responsibilities for the implementation of the general budget of the European communities in the following ways :
 - (a) The Commission shall check the existence and proper functioning of management and control systems in the Member States in accordance with chapter I of Title VII.
 - (b) The Commission shall interrupt, withhold or suspend all or part of payments in accordance with Articles 84, 85 and 86, if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 97 and 98.
 - (c) The Commission shall check reimbursement of prefinancing and automatically decommit budget commitments in accordance with Articles 78(2), 87 and 91.
3. Applying these measures shall enable the Commission to satisfy itself that Member States are utilising the Funds in a lawful and correct manner and in accordance with the principle of sound financial management within the meaning of Articles 27 and 28 of the Regulation Council Regulation (EC) No 1605/2002.
4. The provisions of Title II of the second part of Regulation (EC) No 1605/2002 shall apply to assistance under the Fund.

Article 11

Equality between men and women

The Member States and the Commission shall ensure that equality between men and women and the integration of a gender perspective are promoted during the various stages of implementing the Fund, including the design, implementation, monitoring and evaluation stages.

The Member States shall ensure that operations to enhance the role of women in the fisheries sector are promoted.

CHAPTER IV

Financial framework

Article 12

Resources and concentration

1. The resources available for commitment from the Fund for the period 2007 to 2013 shall be EUR 4 963 million at 2004 prices in accordance with the annual breakdown shown at Annex I.
2. 0.8 % of the resources referred to in the above paragraph shall be devoted to the technical assistance for the Commission s defined in Article 45.
3. For the purpose of their programming and subsequent inclusion in the general budget of the European Communities, the amounts referred to in paragraph 1 shall be indexed as from [...] at [...] per year.
4. The breakdown of budgetary resources provided for in paragraph 1 and not allocated in accordance with paragraph 2 above shall be such as to achieve a significant concentration on the regions concerned by the Convergence Objective.
5. The Commission ensures that total annual allocations from the Fund for any Member State pursuant to this Regulation, and from the ERDF and the ESF pursuant to the Regulation (EC) No (...)including the contribution of the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No (...) and of the Instrument for Pre-Accession pursuant to Regulation (EC) No (...) and from European Agricultural Fund for Rural Development (EAFRD) pursuant to Regulation (EC) No (...) originating from the EAGGF Guidance section contributing to the Convergence objective, shall not exceed 4% of that Member State's GDP, as estimated at the time of the adoption of the inter-institutional agreement.

The Regulations of the financial instruments mentioned other than the European Fisheries Fund include a similar provision.

Article 13

Financial distribution

The Commission shall make indicative breakdowns by Member State of the commitment appropriations available for the programming period 2007 to 2013, while separating out the share contributing to the Convergence objective, using the following objective criteria: the size of the fisheries sector in the Member State, the scale of adjustment need to the fishing effort, the level of employment in the fishing sector and the continuity of measures in hand.

TITLE II

STRATEGIC GUIDELINES

CHAPTER I

STRATEGIC GUIDELINES

Article 14

Community strategic guidelines

1. The Community strategic guidelines for the development of the Common Fisheries Policy establish a framework for the preparation and the implementation of the Fund. They provide the reference framework for the contribution of the Fund to the implementation of the National Strategic plan referred to in Article 15.
2. The Council shall, at Community level adopt the strategic guidelines for the sustainable development of the fisheries and aquaculture sector and the Community's coastal fishing areas for the period from 2007 to 2013.

These guidelines shall define the priorities for assistance within this axis as defined in Title IV of this Regulation.

3. The Community strategic guidelines are adopted with the procedure laid down in Article 37 of the Treaty at the latest three months after the entry into force of this Regulation.
4. The guidelines shall be subject, if necessary, to mid-term review on the basis of the strategic evaluation in accordance with Article 48(4).

CHAPTER II

National strategic plan

Article 15

National strategic plan

1. Within three months following the adoption of the strategic guidelines, before submitting the operational programme, each Member State shall adopt a national strategic plan covering the fisheries sector.

2. The national strategic plan, following close consultation with the partners shall be submitted to the Commission, taking into account the finding of the evaluation provided for in Article 47.
3. The national strategic plan shall be the subject of a dialogue between the Member State and the Commission.
4. The national strategic plan shall cover all aspects of the Common fisheries policy, and set out the priorities, objectives and deadlines for its implementation with particular regard to:
 - (a) the reduction of fishing effort and capacity and identifying the resources and deadlines for attaining the target for the fishery and fleet concerned ;
 - (b) the development of the aquaculture sector and the processing and marketing industry ;
 - (c) the implementation strategy for meeting the requirements for inspection and control of fishing activities and data and information collection on the CFP ;
 - (d) the fisheries product supply strategy and the development of fishing activities outside the Community waters ;
 - (e) the coastal zone development strategy and the criteria for defining these zones.

Article 16

Content of the national strategic plan

1. The national strategic plan contains a summary description of:
 - (a) the state of the fisheries sector as a whole ;
 - (b) the environmental impact assessment ;
 - (c) the indicative allocation of the public financial resources available for implementing the CFP indicating for each national priority for assistance where necessary the share part-financed by the Fund and the share financed by national public Funds.

CHAPTER III

Strategic follow up

Article 17

Strategic report from the Commission and the Member States

1. The Member States shall submit to the Commission, by 30 April 2011, a report on the implementation of the national strategic plan summarising the main developments, trends and challenges including those relating to the implementation of the strategic guidelines.
2. By 31 October 2011, the Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a report on the implementation of the national strategic plans and the Community strategic guidelines.

The Commission shall inform the Fund committee provided for in Article 100.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the Fund

Article 18

Content of the operational programme

1. The operational programmes shall contain the strategy, the priorities and the specific objectives with respect to the Common fisheries policy and other common policies.
2. Assistance shall take the form of operational programmes only. Member States shall draw up an operational programme at national level on completion of close consultations with the regional, local, economic and social partners in the fisheries sector and all other appropriate bodies in accordance with their institutional structure.

Each operational programme shall contain:

- (a) the priorities as defined in the strategic guidelines, their specific targets quantified where they lend themselves to quantification, the expected impact and their consistency with the national strategic plan ;
 - (b) a summary description of the principal measures envisaged for implementing the priorities ;
 - (c) the complementarity with the actions planned under the rural development fund and the other Structural Funds ;
 - (d) a financing plan containing two tables :
 - the first table shall give a breakdown for each year, in accordance with Article [...], of the amount of the total financial allocation envisaged for the contribution from the Fund. The financing plan shall show separately within the total contribution from the Fund the appropriations earmarked for the Convergence Objective. The total contribution from the Fund shall be compatible with the applicable Financial Perspective ;
 - the second table shall specify, for the whole programming period and for each priority, the amount of the financial allocation envisaged for the Community contribution and the national public contributions, the rate of contribution from the Fund for each priority and the amount allocated to technical assistance. Where necessary, the table shall show separately the contribution from the Fund provided for Convergence objective regions together with the national public counterparts.
3. Operational programs are shall be drawn up in accordance with strategic guidelines and the national strategic plan.

Article 19

Implementing provisions for the operational programmes

1. Each Member State shall include in the relevant implementing provisions, in particular :
 - (a) the designation by the Member States of all the authorities provided for in Article 57 ;
 - (b) a description of the procedures for managing operational programmes provided for in Article 58 ;
 - (c) actions aimed at improving and modernising the administrative structures for implementing the Common fisheries policy and strengthening the administrative capacity for the management and inspection of the Fund ;

- (d) a description of evaluation and monitoring systems as well as the composition of the Monitoring Committee provided for in Articles 46 and 61 to 63 respectively ;
 - (e) the procedures for inspecting the implementation of the operational programme provided for in Article 60 ;
 - (f) a definition of procedures for mobilisation and circulation of financial flows in order to ensure their transparency ;
 - (g) the arrangements for ensuring, in accordance with Article 50, that the operational programmes are publicised ;
 - (h) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down in this Regulation ;
 - (i) The designation of the independent inspection body referred to in Article 69(3),.
2. For each of the forms of assistance provided for in Title IV, the Member States shall determine in their operational programme the conditions and procedures for their application. The programme shall in particular indicate clearly the purpose of each measure planned.

Article 20

Preparation and approval

1. Each Member State shall draw up an operational programme at national level following close consultation with the partners. It shall be transmitted to the Commission within three months following the adoption by the Member State of its national strategic plan.
2. The Commission shall appraise the proposed operational programme to determine whether it contributes to the objectives and priorities defined in the Community strategic guidelines and the national strategic plan, taking into account the ex-ante evaluation referred to in Article 47.
3. Where the Commission considers that an operational programme is not consistent with the Community strategic guidelines or the national strategic plan, it shall ask the Member State to revise the proposed programme accordingly.
4. The Commission shall approve each operational programme at the latest five months after it has been submitted formally by the Member State provided the operational programme is drawn up in accordance with Article 18.

Article 21

Duration and review

1. Operational programmes shall cover the period between 1 January 2007 and 31 December 2013.
2. Each operational programme shall be re-examined where a difficulty has arisen in implementation or if there have been significant strategic changes or for reasons of sound management and, if necessary, revised for the rest of the period on the initiative of the Member State or the Commission, after approval by the Monitoring Committee provided for in Article 61. Revisions shall take account in particular of the Commission annual reports and any conclusions of the annual examination, particularly to revise or strengthen the priorities of the common fisheries policy and the finding and conclusions on the mid-term evaluation provided for in Article 48.
3. The Commission shall adopt a decision on requests to review operational programmes within three months of formal submission of the request by the Member State.

Article 22

Cumulation and overlap

During the eligibility period an operation shall qualify for a contribution from one Fund or one Community financial instrument only. The Member States shall ensure that this provision is observed.

TITLE IV

AXES PRIORITAIRES

CHAPTER I

PRIORITY AXIS 1 MEASURES FOR THE ADAPTATION OF THE COMMUNITY FISHING FLEET

Article 23

Scope

The Fund shall contribute to financing:

- (a) public aid for ship owners and crews affected by national plans to adjust fishing effort where these form part of the following:
- recovery plans as referred to in Article 5 of Regulation (EC) No 2371/2002 ;
 - emergency measures as referred to in Articles 7 and 8 of Regulation (EC) No 2371/2002 ;
 - national effort adjustment plans following the non-renewal of a fisheries agreement between the Community and a third country or a substantial cut in fishing opportunities under an international agreement or other arrangement ;
 - management plans as referred to in Article 6 of Regulation (EC) No 2371/2002 ;
 - national plans for exit from the fleet with a maximum duration of two years as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002 on the adjustment of the capacity of the Community fishing fleet.
- (b) investments on board vessels in accordance with Article 27.
- (c) socio-economic compensation in support of fleet management, including professional training.

Article 24

Programming of fishing effort adjustment

1. Each Member State shall lay down in its strategic national plan its policy for adjusting fishing effort. It shall accord priority to the financing of the operations referred to in Article 23 (a) first indent.
2. National fishing effort adjustment plans provided for in Article 23 (a) first indent shall include measures for the permanent cessation of fishing activities in accordance with the provisions of Article 25.
3. They may also include temporary cessation measures in accordance with Article 26 and all other relevant measures in this Chapter.
4. In the regions covered by the Convergence Objective, the national fishing effort adjustment plans shall include the socio-economic compensation provided for in Article 28.
5. In the regions not covered by the Convergence Objective, the Member States shall be required to present national socio-economic supporting measures in the national fishing effort adjustment plans.

6. The duration of the national fishing effort adjustment plans referred to in Article 23 (a) shall not exceed two years.

In the cases provided for in Article 23 (a), first, second and fourth indent, the national plans shall be adopted by the Member States within two months following the date of the Council or Commission decision.

In the cases provided for in Article 23 (a), third indent, the Member States shall adopt the restructuring plans for the vessels and fishermen affected within two months following the notification from the Commission.

Article 25

Public aid for permanent cessation

1. The Fund shall provide assistance for the part-financing of the permanent cessation of fishing activities of vessels provided it forms part of a fishing effort adjustment plan referred to in Article 23 (a). The definitive cessation of fishing activities of a vessel may be achieved only by the scrapping of the vessel or its re-assignment for non-profit making purposes

Public aid for definitive cessation paid to the owners of vessels shall apply to the vessel's fishing capacity and, where appropriate, to the fishing rights associated with it.

2. To facilitate the implementation of national fishing effort adjustment plans the Member States may make public calls for tenders or calls for proposals.

The Member States may also set the level of public aids taking into account the best cost/effectiveness ratio on the basis of one or more of the following objective criteria:

- (a) the price of the fishing vessel recorded on the national market or its insurance value ;
- (b) the turnover of the vessel ;
- (c) the age of the vessel and its tonnage or engine power expressed in GT or kW respectively.

3. Each year the Member States shall communicate in the annual implementing report provided for in Article 65 the results achieved in implementing their national fishing effort adjustment plans. The results shall be measured using relevant indicators defined in the operational programmes.

Article 26

Public aid for temporary cessation

1. In the context of the fishing effort adjustment plans referred to in Article 23 (a), first, second and fourth indent, the Fund may contribute to the financing of aid measures for the temporary cessation of fishing activities for fishermen and the owners of vessels for a maximum period of one year, which may be extended by a year.

These temporary cessation measures shall accompany a fishing effort adjustment plan ensuring within two years a permanent reduction in capacity equal at least to the reduction in fishing effort resulting from the temporary cessation.

2. The Fund may contribute to the financing of temporary cessation allowances to fishermen and the owners of vessels for a maximum period of six months in the event of a natural disaster or other exceptional occurrence which is not the result of resource conservation measures.
3. Each year the Member States shall communicate in the annual implementing report provided for in Article 65 the results achieved in implementing the temporary cessation measures.
4. A recurrent seasonal suspension of fishing shall not be taken into account for the grant of allowances or payments under this Regulation.

Article 27

Investments on board fishing vessels and selectivity

1. The Fund may contribute to the financing of equipment:
 - (a) provided for in Article 11(5) of Regulation (EC) No 2371/2002 ;
 - (b) making it possible for catches to be kept on board the discarding of which is no longer authorised ;
 - (c) as part of pilot projects covering the preparation or trial of new technical measures for a limited period to be set by the Council or the Commission ;
 - (d) for reducing the impact of fishing on habitats and the sea bottom and on non-commercial species excluding fishing gear.
2. The Fund may contribute to the financing of investments to achieve the selectivity of fishing gear provided that the vessel concerned is affected by a recovery plan referred to in Article 23(a), first indent, is changing fishing method, and is leaving the fishery concerned to go to another fishery where the state of the resource makes fishing possible and that the investment only concerns the first replacement of the fishing gear.

3. In addition to the cases described in paragraph 2, the Fund may contribute to the financing of the first replacement of fishing gear provided that the new gear is more selective and meets recognised environmental criteria and practices which go beyond existing regulatory obligations.

Article 27a

Small-scale coastal fishing

1. For the purposes of this Article, ‘small-scale coastal fishing’ means fishing carried on by fishing vessels of an overall length of less than 12 metres and not using towed gear as listed in table 2, Annex I of Commission Regulation (EC) No 26/2004 of 30 December 2003 regarding the fishing vessels register of the Community⁽¹²⁾.
2. Where the Fund provides financing for measures under Article 27 of this Regulation in favour of small-scale coastal fishing the private financial participation rate shown in group 2 of the table in Annex II shall be reduced by 20%.
3. Where the Fund provides financing for measures under Article 28 of this Regulation the rates shown in group 3 of Annex II shall be applied.
4. The Fund may contribute to the payment of premiums for fishermen and vessel owners involved in small-scale coastal fishing in order to:
 - Improve management and control of access conditions to certain fishing areas;
 - Promote the organisation of the production, processing and marketing chain of fisheries products;
 - Promote voluntary steps to reduce fishing effort for the conservation of resources;
 - Use technological innovations (more selective fishing techniques which go beyond the relevant regulatory requirements) that do not increase fishing effort;

The rates laid down in group 3 of the table of Annex II of this Regulation shall be applied.

Article 28

Socio-economic compensation for the management of the fleet

1. The Fund may contribute to the financing of socio-economic measures proposed by the Member States for fishermen affected by developments in fishing and which involve:
 - (a) the diversification of activities with a view to promoting multiple jobs for people actively employed in the fishing sector ;

¹² OJ L 5, 9.1.2004, p. 25.

- (b) schemes for retraining in occupations outside sea fishing ;
 - (c) early departure from the fishing sector, including early retirement.
2. The Fund may also contribute to the financing of training measures and training incentives for young fishermen who wish to become owners of a fishing vessel for the first time.

CHAPTER II

PRIORITY AXIS 2 AQUACULTURE, PROCESSING AND MARKETING OF FISHERY AND AQUACULTURE PRODUCTS

Article 29

Investments in aquaculture

1. The Fund may support investments in aquaculture under the specific objectives to be included in the national strategic plans provided for in Article 15.
2. Such investments may cover the construction, extension, equipment and modernisation of production installations, in particular with a view to improving conditions relating to hygiene, human or animal health and product quality, or reducing negative impact on the environment. Transfer of the ownership of a business shall not be eligible for Community aid.
3. Where investments are realised for the purpose of guaranteeing compliance with the Community standards recently introduced on the environment, human or animal health, hygiene or animal welfare, aid may be granted with a view to guaranteeing compliance with those new standards only within the time limits set by Community legislation.
4. The Fund shall not assist investments aimed at increasing the production of products which do not find normal market outlets or which could have adverse effects on the policy for conservation of fishing resources.
5. Aid shall not be granted to projects as provided for in Annex II to Directive 85/337/EEC¹³ in respect of which the information laid down in Annex IV to that Directive has not been provided.

¹³ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40). Directive as last amended by Directive 2003/35/EC (OJ L 156, 25.6.2003, p. 17).

Article 30

Eligible measures

1. The Fund shall assist investments helping to realise one or more of the following objectives:
 - (a) diversification towards new species and production of species_with good market prospects ;
 - (b) implementation of breeding methods substantially reducing environmental impact when compared with normal practice in the fisheries sector ;
 - (c) support for traditional aquaculture activities important for preserving both the economic and social fabric and the environment;
 - (d) measures of common interest relating to aquaculture as provided for in Chapter III of this Title and vocational training ;
 - (e) compensating for the use of aquaculture production methods helping to protect the environment and conserve nature ;
 - (f) implementation of public and animal health measures.
2. Investment aid shall be reserved for micro and small businesses.

Article 31

Supporting aqua-environmental measures

1. The Fund may assist in granting compensation for the use of aquaculture production methods helping to protect and improve the environment and to conserve nature in order to meet Community objectives relating to fishing and the environment.
2. The purpose of the support is to promote:
 - (a) forms of aquaculture comprising protection and enhancement of the environment, natural resources, genetic diversity, and management of the landscape and traditional features of aquaculture zones ;
 - (b) participation in the Community eco-management and audit scheme created by Regulation (EC) No 761/2001 of the European Parliament and the Council¹⁴ ;
 - (c) organic aquaculture within the meaning of Regulation (EEC) No 2092/91¹⁵.

¹⁴ OJ L 114, 24.4.2001, p. 1.

¹⁵ Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ L 198, 22.7.1991, p. 1). Regulation as last amended by Regulation (EC) No 392/2004 of 24 February 2004 (OJ L 65, 3.3.2004).

3. In order to receive grants under this Article, promoters of projects must commit themselves to aqua-environmental requirements for a minimum of five years which go beyond the mere application of normal good aquaculture practice. The benefits of such commitments must be demonstrated by an ex ante impact assessment to be conducted by a body designated by the Member State.
4. The maximum annual amount of public aid granted as compensation for an aqua-environmental undertaking shall be defined each year by the Member State in its operational programme on the basis of the following criteria:
 - (a) the loss of revenue incurred ;
 - (b) the additional cost which may result from the application of aqua-environmental methods, and
 - (c) the need to provide a financial support for carrying out the project.

Article 32

Public and animal health measures

The Fund may assist:

- (a) in granting shellfish farmers compensation for the temporary suspension of farmed mollusc harvesting. The maximum duration for which compensation may be granted shall be six months over the entire period 2007-2013. The compensation may be granted where contamination of molluscs owing to the proliferation of toxin-producing plankton or the presence of plankton containing biotoxins entails, for public health protection purposes, suspension of the harvest :
 - for more than four month consecutively or ;
 - where the loss suffered as a result of suspension of the harvest amounts to more than 35% of the annual turnover of the business concerned, calculated on the basis of the average turnover of the business over the preceding three years.
- (b) finance for the eradication of pathological risks in aquaculture where a slaughter plan is approved by the Commission under the terms of Decision 90/424/EEC¹⁶.

¹⁶ Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field. Decision as last amended by Directive 2003/99 of the European Parliament and of the Council of 17 November 2003 (OJ L 325, 12.12.2003, p.31).

Article 33

Investments in processing and marketing

1. The Fund may support, under the specific strategies to be included in the national strategic plans, investments in processing for direct human consumption and in the marketing of fishery and aquaculture products. This aid is restricted to micro and small enterprises.
2. Such investments may cover the construction, extension, equipment and modernisation of businesses, in particular with a view to improving conditions relating to hygiene, human or animal health and product quality, or reducing negative impact on the environment. Transfer of the ownership of a business shall not be eligible for Community aid.
3. Where investments are realised for the purpose of guaranteeing compliance with the Community standards recently introduced on the environment, human or animal health, hygiene or animal welfare, aid may be granted with a view to guaranteeing compliance with those new standards only within the time limits set by Community legislation.

Article 34

Eligible measures

1. The Fund shall assist investments in the field of processing and marketing for the construction, extension, fitting out and modernisation of firms.
2. Investment under the paragraph 1 shall contribute to preserving or increasing employment in the fisheries sector and to achieving one or more of the following objectives:
 - (a) improving working conditions and vocational training ;
 - (b) improving and monitoring public health and hygiene conditions or product quality ;
 - (c) reducing negative impacts on the environment ;
 - (d) helping to improve the use of little-used species, by-products and waste ;
 - (e) applying new technologies, or developing e-commerce ;
 - (f) marketing products mainly originating in landings from the local fleet.
3. Community aid shall not be granted to investments relating to the retail trade.

CHAPTER III

PRIORITY AXIS 3 MEASURES OF COLLECTIVE INTEREST

Article 35

Principles for Assistance

The Fund may assist collective actions of limited duration which would not normally be supported by private enterprise and which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisations recognised by the Managing Authority and which help to meet the objectives of the common fisheries policy.

Article 36

Collective action

The fund shall support collective actions which aim to:

- (a) contribute sustainably to better management or conservation of resources, or to the transparency of markets in fishery and aquaculture products, or
- (b) involve collective investments in the development of breeding sites, in waste treatment or in the purchase of production, processing or marketing equipment or,
- (c) promote partnership between scientists and operators in the fisheries sector. or,
- (d) contribute to the objectives laid down in Article 27a(4) of this Regulation.

Article 37

Measures intended to protect and develop aquatic fauna

1. The Fund may assist actions of collective interest intended to protect and develop aquatic fauna, excluding direct restocking. The actions must contribute to enhancing the aquatic environment
2. These actions shall relate to the installation of static or mobile installations intended to protect and develop aquatic fauna or to rehabilitate inland waterways, including spawning grounds and migration routes for migratory species.
3. The actions must be implemented by public or semi-public bodies, recognised trade organisations or other bodies appointed for that purpose by the Managing authority.

Article 38

Fishing ports

1. The Fund may support investments in fishing ports of interest to all the fishermen using the port and helping to improve the services offered to the fishermen.
2. The investments shall relate to:
 - (a) improving the conditions under which fishery products are landed, processed and stored in the ports ;
 - (b) the provision of fuel, ice, water and electricity ;
 - (c) fishing vessel maintenance and repair equipment ;
 - (d) improvement of quays in order to improve safety during the landing or loading of products ;
 - (e) computerised management of fishing activities.

Article 39

Promotion and development of new markets

1. The Fund may support collective actions intended to implement a policy of quality and value enhancement, promotion or development of new markets for fishery and aquaculture products.
2. The actions may not be aimed at trademarks or make reference to specific countries or geographical areas, except in the case of products recognised under the terms of Council Regulation (EEC) No 2081/92¹⁷.
3. The investments shall relate to:
 - (a) conducting national and transnational promotion campaigns ;
 - (b) the disposal of surplus or underexploited species which are discarded or of no commercial interest ;
 - (c) implementation of a quality policy for fishery and aquaculture products ;
 - (d) promotion of products obtained using methods with low impact on the environment ;

¹⁷ Regulation of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. (OJ L208, 24.7.1992, p. 1). Regulation as last amended by Regulation (EC) No 806/2003 of 14 April 2003 (OJ L122, 16.5.2003, p. 1).

- (e) promotion of products recognised under the terms of Regulation (EEC) No 2081/92 ;
- (f) quality certification ;
- (g) labelling, including the labelling of products caught using environmentally friendly fishing methods ;
- (h) product promotion campaigns or campaigns to improve the image of the fisheries sector ;
- (i) implementation of market surveys.

Article 40

Pilot projects

1. The Fund may support pilot projects aimed at acquiring and disseminating new technical knowledge and carried out by an economic operator, a recognised trade association or any other competent body designated for that purpose by the Managing authority, in partnership with a scientific or technical body.
2. The pilot projects provided for in the previous paragraph should:
 - (a) test, under near-actual conditions in the production sector, the technical or financial viability of an innovative technology with the aim of acquiring and disseminating technical or financial knowledge of the technology tested ;
 - (b) enable tests to be carried out on management plans and fishing effort allocation plans, including, if necessary, the establishment of no-fishing zones, in order to evaluate the biological and financial consequences, and experimental restocking.

A pilot project shall always include adequate scientific follow-up in order to yield significant results.
3. The results of projects financed under paragraph 1 shall be the subject of technical reports available to the public.

Article 41

Modification or reassignment of fishing vessels

The Fund may support the modification of fishing vessels for exclusively training or research purposes in the fisheries sector by public or semi-public bodies, under the flag of a Member State.

The Fund may support actions to reassign a fishing vessel permanently to non profit-making activities outside professional fishing.

CHAPTER III

PRORITY AXIS 4 SUSTAINABLE DEVELOPMENT OF COASTAL FISHING AREAS

Article 42

Scope of assistance

1. The Fund shall provide assistance, in addition to the other Community instruments, for the sustainable development and improvement of the quality of life of coastal fishing areas eligible as part of an overall strategy which seeks to support the implementation of the objectives of the common fisheries policy, in particular taking account of its socio-economic consequences.
2. The measures for the sustainable development of coastal fishing areas shall seek to:
 - (a) maintain the economic and social prosperity of these areas and value to fisheries and aquaculture products ;
 - (b) maintain and develop jobs in coastal fishing areas through support for diversification or the economic and social restructuring of areas faced with socio-economic difficulties as a result of changes in the fisheries sector ;
 - (c) promote the quality of the coastal environment ;
 - (d) support and develop cooperation between national and transnational coastal fishing areas.
3. Each Member States shall include in its operational programme a list of the areas eligible for support from the Fund under sustainable development of coastal areas.

A fisheries coastal area is generally smaller than NUTS III, with a sea or lake shore, or including a river estuary which has links with fisheries. The area should be reasonably be coherent from a geographical and oceanographical, economic and social view point.

The area should have low population density shall, a significant level of employment in the fisheries sector, fishing shall be in decline, and there shall be no municipality with more than 100 000 inhabitants.
4. The Member State shall inform the Commission of the eligible areas under paragraph 3.

Eligible measures

1. Support for the sustainable development of coastal fishing areas may be granted for:
 - (a) restructuring and re-directing economic activities, in particular by promoting green tourism, provided these actions do not result in an increase in fishing effort ;
 - (b) diversifying activities through the promotion of multiple employment for people actively employed in the fisheries sector, through the creation of additional or replacement jobs outside the fisheries sector ;
 - (c) local commercial exploitation of sea food ;
 - (d) supporting slam fisheries related installation and promoting tourist activities ;
 - (e) protecting the marine, lake and coastal environment to maintain its attractiveness, regenerating and developing coastal hamlets and villages and protecting and capitalising on the natural and architectural heritage ;
 - (f) re-establishing production potential in the fisheries sector when damaged by natural or industrial disasters ;
 - (g) support for inter-regional and trans-national cooperation among actors in coastal fishing areas, mainly through networking and disseminating best practice ;
 - (h) acquiring organising and presentational skills for the preparation and implementation of the local development strategy.
2. The Fund may finance, on a secondary basis, up to a maximum of 15% of the axis involved, measures to promote and improve professional skills, worker adaptability and access to employment, particularly to women, provided that these measures are an integral part of a sustainable development strategy for coastal areas and that they have a direct link with the measures described in the first paragraph.
3. Support granted under paragraph 1 may not involve the renewal or modernisation of fishing vessels.
4. Beneficiaries of support provided for in points (a) and (b) of the first paragraph and paragraph 2 of this Article should be either persons employed in the fisheries sector or persons with a job dependant on the sector.
5. If a measure under this Article is also eligible under another Community support instrument, the Member State shall make clear in drawing up its programme whether it is supported by the Fund or by another Community support instrument.

Article 44

Participation in the sustainable development for coastal fishing areas

1. Actions to assist sustainable development of coastal fishing areas shall be implemented on a given territory by a group of local public or private partners set up for this purpose, hereafter called the ‘coastal action group’ (CAG). Each CAG, established in accordance with the law of the Member State concerned, shall be selected transparently following a public call for proposals.
2. Operation carried out on the initiative of CAGs shall be the responsibility of the private sector for a least two third of the projects.
3. The CAGs may qualify for support from the Fund provided that they carry out integrated local development actions based on a bottom up process and applied in a given territory or to a specific category of persons or type of projects. The Member State shall ensure that the CAG has sufficient administrative and financial capacity to administer the forms of assistance and successfully complete the planned operations.
4. The territory covered by the CAG should be consistent and have sufficient critical mass in terms of human, financial and economic resources to support a viable development strategy.
5. The CAGs in a given Member State or region, depending on the specific nature of the institutional structure, shall form a joint association with statutes which guarantee their proper functioning.

CHAPTER V

PRIORITY AXIS 5 TECHNICAL ASSISTANCE

Article 45

Technical assistance

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of 0.80% of its annual allocation, the Fund may finance the preparatory, monitoring, administrative and technical support, evaluation, audit and inspection measures necessary for implementing this Regulation. These actions are executed in accordance with Article 53(2) of Regulation (EC, Euratom) No 1605/2002 and any other provisions of that Regulation and of its implementing rules applicable to this form of execution of the budget.

Those actions shall include:

- (a) studies linked to the drawing up of the strategic guidelines of the Community and the Commission’s annual report ;

- (b) evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the Funds ;
 - (c) measures aimed at the partners, the beneficiaries of assistance from the Fund and the general public, including information measures ;
 - (d) measures to disseminate information, networking, raise awareness, promote cooperation and exchange experiences throughout the Community ;
 - (e) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation ;
 - (f) improvements in evaluation methods and the exchange of information on practices in this field ;
 - (g) the establishment of trans-national and Community networks of actors in the sustainable development of coastal fishing zones with a view to encouraging the exchange of experience and best practice, stimulating and implementing trans-regional and trans-national cooperation and the dissemination of information.
2. At the initiative of the Member States, the Fund may finance under each operational programme actions relating to the preparation, management, monitoring, evaluation, publicity, control and audit of assistance to operational programmes up to a limit of 5% of the total amount of each operational programme.
 3. At the initiative of the Member States, the Fund may also finance actions under each operational programme relating to improving the administrative capacities of the Member States all of whose regions are eligible under the Convergence Objective.

TITLE V

EFFECTIVENESS OR AND PUBLICITY FOR ASSISTANCE

CHAPTER I

EVALUATION OF OPERATIONAL PROGRAMMES

Article 46

General provisions

1. The operational programmes shall be subject to *ex ante*, interim and *ex post* evaluations under the provisions of Articles 47 to 49.

Evaluations shall aim to improve the quality and effectiveness of Fund assistance and the implementation of the operational programmes. They shall also appraise their impact with respect to the strategic guidelines of the Community, the national strategic plans and the specific problems affecting the Member States while taking account of the needs of sustainable development in the fisheries sector and the environmental impact.

2. The effectiveness of Fund assistance shall be appraised on the basis of the following criteria:
 - (a) the overall impact of the Fund on the objectives set out in Article 4 of this regulation ;
 - (b) the impact of the priorities built into the programmes.
3. The evaluation activities provided for in paragraph 1 shall be organised under the responsibility of the Member States or the Commission, as appropriate, in accordance with the principle of proportionality and on the basis of a partnership between the Commission and the Member State.
4. The Member States shall provide the human and financial 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.
5. The Commission decides the evaluation methods and standards to be applied in accordance with the procedure referred to in Article 100(3).
6. Evaluation shall be carried out by independent assessors. The results shall be published, unless the authority responsible for the evaluation expressly objects, in accordance with the provisions of Regulation (EC) No 1049/2001 of the European Parliament and the Council.¹⁸
7. Evaluations shall be financed from the budget for technical assistance of the operational programmes if they are carried out under the responsibility of the Member State and from the budget for technical assistance of the Commission if they are carried out under its responsibility.

Article 47

Ex ante evaluation

1. The *ex ante* evaluation shall aim to ensure the coherence between the strategic guidelines of the Community, the national strategic plans and the operational programmes as well as to optimise the allocation of budgetary resources to the operational programmes and to improve programming quality

¹⁸ JO L 145, 31.5.2003, p. 43.

2. Member States shall carry out an *ex ante*-evaluation at the level of the operational programme in accordance with the principle of proportionality, and in conformity with the evaluation methods and standards to be defined under the procedure provided for in article 46(5).

Article 48

Interim evaluation

1. The interim evaluation shall aim to examine the effectiveness of all or part of the operational programme with the aim of adjusting it to improve the quality of assistance and its implementation.
2. Interim evaluations shall be performed for an operational programme in accordance with the principle of proportionality on the basis of and a calendar which makes it possible to take account of the findings in case the programme is extended.
3. Interim evaluations shall be organised under the responsibility of the Member States and on the initiative of the managing authorities in consultation with the Commission in accordance with the evaluation methods and standards to be defined under the procedure provided for in Article 46(5). They are forwarded to the monitoring committee of the operational programme and to the Commission.
4. The Commission proceeds to an interim evaluation of the implementation of the strategic guidelines of the Community on the basis of a calendar permitting the use of results in every decision concerning the continuation of the programming.

Article 49

Ex post evaluation

1. *Ex post* evaluation examines the degree of utilisation of resources, the effectiveness and efficiency of the operational programme and its impact in relation to the general objectives set out in Article 4 and the strategic guidelines of the Community. It shall identify the factors which contributed to the success or failure of the implementation of the operational programmes, including from the viewpoint of sustainability, and best practices.
2. The *ex post* evaluation shall be performed on the initiative and under the responsibility of the Commission in consultation with the Member State and the managing authority, which shall collect the information necessary for its implementation.
3. The *ex post* evaluation shall be completed no later than 31 December 2015.

CHAPTER II

Information and publicity

Article 50

Information and publicity

1. The Member States shall provide information on and publicise co-financed programmes and operations. The information shall be intended to European citizens. It shall aim to highlight the role of the Community and ensure that assistance from the Funds is transparent.
2. The Managing authority shall be responsible:
 - (a) to ensure that the operational programme is publicised to potential beneficiaries, trade associations, economic and social partners, organisations promoting equal rights and opportunities, non-governmental organisations in the environmental sector and non-governmental organisations involved in the fisheries sector. The Managing authority shall inform them about the opportunities offered by the assistance and the rules and methods governing access to financing ;
 - (b) to inform the beneficiaries of the amount of Community co-financing ;
 - (c) to inform European citizens about the role played by the Community in the operational programmes and their results, and also ensuring that beneficiaries inform European citizens of that role.
3. The Member States shall notify the Commission each year of the initiatives undertaken for the purposes of this Article.

TITLE V

FINANCIAL CONTRIBUTION BY THE FUND

CHAPTER I

CONTRIBUTION BY THE FUND

Article 51

Public aid intensity

The maximum intensity of public aid is set out in the table in Annex II to this Regulation.

Article 52

Contribution by the Fund

1. The decision adopting an operational programme shall set the maximum contribution of the Fund for each priority.
2. The Fund contribution shall be calculated in relation to the entirety of public expenditure.
3. The Fund contribution shall be established per priority. It shall be subject to the following ceilings:
 - (a) 75% of public expenditure part-financed by the Fund in regions eligible under the Convergence Objective ;
 - (b) 50% of public expenditure for operational programmes in other regions not eligible under the Convergence Objective ;
 - (c) 85% of public expenditure for that part of operational programmes concerning the outermost regions and the outlying Greek islands.
4. By derogation from the ceilings listed in paragraph 3, Fund assistance shall be
 - (a) 85% of public expenditure for actions falling under Article 23(a) first indent in regions covered by the Convergence Objective ;
 - (b) 65% of public expenditure for actions falling under Article 23(a) first indent for those regions outside the Convergence Objective.
5. The minimum Fund contribution per priority shall be 20% of public expenditure.

Technical assistance measures implemented on the initiative or on behalf of the Commission may be financed at the rate of 100%.

6. The overall amount of support granted to an operation by the Fund and by other aids granted by the Community budget may not exceed 90% of the public expenditure allocated assistance to the operation.

Article 53

Non Accumulation

A priority or operation may, during the period of eligibility, benefit from contributions from no more than one Community Fund at a time. An operation may benefit from contributions from no more than one operational programme at a time.

Article 54

Eligibility of expenditure

1. Expenditure shall be eligible for a contribution from the Fund if it has actually been incurred by the beneficiary for carrying out an operation between 1 January 2007 and 31 December 2015. Operations co-financed must not have been completed before the starting date for eligibility.
2. Expenditure shall be eligible for a contribution from the Fund only if it has been incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility in accordance with criteria set in advance by the monitoring committee.

A new expenditure, introduced during the review of an operational programme, shall be eligible from the date of the receipt by the Commission of the request for modification of the operational programme.

3. The rules on eligibility of expenditure shall be laid down at national level subject to the exceptions provided in this Regulation.
4. The following expenditure is not eligible :
 - (a) VAT ;
 - (b) debt interest ;
 - (c) purchase of land for an amount higher than 10% of total eligible expenditure for the action concerned ;
 - (d) accommodation.
5. Provisions in paragraphs 1 to 3 of this Article shall be without prejudice to the provisions of Article 45.

Article 55

Durability of operations

1. The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within seven years of the date of the financing decision of the competent national authorities or the Managing authority, undergo a substantial modification:
 - (a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage ;
 - (b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation or relocation of a productive activity.
2. The Managing authority shall inform the Commission of any such modification provided for in paragraph 1.
3. Amounts unduly paid shall be recovered in accordance with Title VIII, chapter II.
4. The Member State shall ensure that undertakings from which sums are recovered in accordance with paragraph 3 do not benefit from a contribution from the Fund..

TITLE VI

MANAGEMENT, MONITORING AND CONTROLS

CHAPTER I

Management and control system

Article 56

General principles of the management and control systems

1. The management and control systems of operational programmes set up by Member States shall provide for:
 - (a) a clear definition of the functions of the bodies concerned in management and control and a clear allocation of functions within each body ;
 - (b) a clear separation of functions between bodies concerned in the management, certification of expenditure and control, and within each body ;
 - (c) adequate resources for each body to carry out the functions which have been assigned to it ;

- (d) effective internal audit arrangements ;
 - (e) reliable accounting, monitoring and financial reporting systems, which shall be in computerised form ;
 - (f) an effective system of reporting and monitoring where the performance of tasks is delegated ;
 - (g) the existence of manuals of procedures for the functions to be performed ;
 - (h) effective arrangements for auditing the proper operation of the system ;
 - (i) systems and procedures to ensure an adequate audit trail.
2. The measures laid down in points b), c), d), f), g) and h) shall be proportionate to public expenditure under the operational programme concerned.

Article 57

Designation of authorities

1. For each operational programme the Member State shall designate the following:
 - a) a managing authority: an authority, or public or private national, regional or local body designated by the Member State, or the Member State itself when it carries out that task, to manage an operational programme ;
 - b) a certifying authority: a body or local, regional or national authority designated by the Member State to certify declarations of expenditure and applications for payment before they are sent to the Commission ;
 - c) an Audit Authority: a body operationally independent of the managing authority and the certifying authority designated by the Member State for each operational programme and responsible for verifying the sound operation of the management and control system.
2. In addition to the authorities referred to in paragraph 1, the Member State shall also designate a competent body for receiving the payments made by the Commission and a body or bodies responsible for making payments to the beneficiaries.
3. The Member State shall lay down rules governing its relations with those authorities and bodies and their relations with the Commission. Without prejudice to this Regulation, the Member State shall lay down the mutual relations of those authorities, which shall carry out their tasks in full accordance with the institutional, legal and financial systems of the Member State concerned.
4. Subject to Article 56(1)(b) several or all management, payment, certification and inspection functions may be carried out by the same body.

Functions of the Managing authority

1. The Managing authority shall be responsible for managing and implementing the operational programme efficiently, effectively and correctly and in particular for:
 - (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply, for their whole implementation period, with applicable Community and national rules ;
 - (b) verifying the delivery of the co-financed products and services and that the expenditure declared for operations has actually been incurred and complies with Community and national rules ;
 - (c) ensuring that there is a system for recording and storing in computerised form detailed accounting records of each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, control and evaluation is collected ;
 - (d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation ;
 - (e) ensuring that the evaluations of operational programmes referred to in Article 46 are carried out within the time limits laid down in this Regulation and meet the quality standards agreed between the Commission and the Member State ;
 - (f) setting up procedures to ensure that all documents regarding expenditure and checks required to ensure an adequate audit trail are held in accordance with the requirements of Articles 83 and 93 ;
 - (g) ensuring that the certifying authority receives all necessary information on the procedures and checks carried out in relation to expenditure for the purpose of certification ;
 - (h) leading the Monitoring Committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals ;
 - (i) drawing up and, after approval by the Monitoring Committee, submitting to the Commission the annual and final reports on implementation ;
 - (j) ensuring compliance with the information and publicity requirements laid down in Article 50.

The Managing authority should have an internal audit function.

Article 59

Functions of the Certifying Authority

The Certifying Authority of an operational programme shall be responsible in particular for:

1. drawing up and submitting to the Commission certified statements of expenditure and applications for payment in a computerised form ;
2. certifying that:
 - (a) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents ;
 - (b) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with the applicable Community and national rules.
3. ensuring for the purposes of certification that it has received adequate information from the Managing authority on the procedures operated and the controls carried out in relation to expenditure included in statements of expenditure ;
4. taking account for the purposes of certification of the results of all audits carried out by or under the responsibility of the Audit Authority ;
5. maintaining accounting records in computerised form of expenditure submitted to the Commission ;
6. ensuring the recovery of any amounts of Community funds found to have been unduly paid as a result of irregularities detected, together with interest where appropriate, keeping an account of amounts recoverable, and repaying to the Commission amounts recovered by deduction from the next statement of expenditure where possible.

Article 60

Functions of the Audit Authority

1. The inspection authority of an operational programme shall be responsible in particular for:
 - (a) ensuring that audits are carried out in accordance with international audit standards to verify the effective functioning of the management and control system of the operational programme ;
 - (b) ensuring that audits are carried out on operations on an appropriate sample to verify expenditure declared;

- (c) presenting the Commission within six months of the approval of the operational programme an audit strategy covering the bodies which will perform the audits referred to under subparagraphs a) and b), the method to be used, the sampling method for checks on operations, and the indicative planning of the audits to ensure that the main bodies are audited and that the audits are spread evenly throughout the programming period;
 - (d) where common systems apply in more than one operational programme, a single combined audit strategy may be submitted under point c);
 - (e) by 30 June each year from 2008 up to 2016:
 - (i) establishing an annual control report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the operational programme during the previous year and reporting the shortcomings found in the systems for the management and control of the programme. The information concerning 2014 and 2015 may be included in the final report to accompany the declaration of validity;
 - (ii) issuing an opinion as to whether the management and control system has operated effectively to give reasonable assurance on the correctness of the statements of expenditure presented to the Commission during that year and the legality and regularity of the underlying transactions,
 - (f) providing the information on the audits and opinions, which can be grouped in a single report when a common system applies to several operational programmes;
 - (g) providing a declaration at the closure of the programme assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure supported by a final control report.
2. Where the audits referred to in points r (a) and (b) are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that such bodies have the necessary functional independence and that the work is performed to internationally accepted audit standards.

CHAPTER II

Monitoring

Article 61

Monitoring Committee

The Member State shall set up a monitoring committee for each operational programme, in agreement with the Managing authority after consultation with the partners. Each Monitoring

Committee shall be set up within three months of the decision approving the operational programme.

It 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.

Article 62

Composition

1. The Monitoring Committee shall be chaired by a representative of the Member State or the Managing authority. At its own initiative, a representative of the Commission may participate in the work of the monitoring committee in an advisory capacity.
2. Its composition shall be decided by the Member State and shall include the partners referred to in Article 8 and the Managing Authority .

The Managing authority shall coordinate the Monitoring Committee

Article 63

Tasks

The Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the operational programmes .To that end:

- (a) it shall consider and approve the criteria for selecting the operations financed within four months of the approval of the operational programme. The selection criteria shall be revised in accordance with programming needs ;
- (b) it shall periodically review progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the Managing authority ;
- (c) it shall examine the results of implementation, particularly achievement of the targets set for each priority and the interim evaluations referred to in Article 48;
- (d) it shall consider and approve the annual and final reports on implementation referred to in Article 65 before they are sent to the Commission ;
- (e) it shall be informed of the annual inspection report and of any comments the Commission may make after examining that report ;
- (f) at the initiative of the Member State, it may be informed of the annual report referred to in Article 17 ;

- (g) it may propose to the Managing authority any adjustment or review of the operational programme likely to make possible the attainment of the Fund's objectives or to improve its management, including its financial management ;
- (h) it shall consider and approve any proposal to amend the contents of the Commission decision on the contribution of the Fund.

Article 64

Arrangements for monitoring

1. The Managing authority and the Monitoring Committee shall ensure the quality of implementation of the operational programme.
2. The Managing authority and the Monitoring Committee shall carry out monitoring by reference to financial indicators and indicators of implementation, results and impact defined in the operational programme.
3. Where the nature of the assistance permits, the statistics shall be broken down by gender and by the size of the recipient undertakings.
4. The Commission, in partnership with the Member States, shall examine the indicators necessary for monitoring and evaluating the operational programme.

Article 65

Annual reports and final reports

1. For the first time in 2008 and by 30 June each year the Managing authority shall forward an annual report to the Commission on implementation of the operational programme. The Managing authority shall forward a final report on implementation of the operational programme to the Commission by 30 June 2016.
2. All annual reports on implementation and the final report shall contain the following elements:
 - (a) the progress made in implementing the operational programme and priorities in relation to their specific verifiable objectives, with a quantification, wherever and whenever they lend themselves to quantification , of the financial, implementation, result and impact indicators for the priority ;
 - (b) a change in the general situation having a direct impact on the implementation of the assistance, in particular significant socio-economic developments, changes in national, regional or sectoral policies, and, where necessary, their consequences for consistency between assistance from the Fund and from other financial instruments ;

- (c) the financial implementation of the operational programme detailing for each priority, the expenditure paid to the beneficiaries and to the corresponding public contribution, the total payments received from the Commission, and quantifying the financial indicators referred to in Article 64 (2) ;
 - (d) the financial implementation by type of assistance in accordance with the breakdown of priorities provided for in Title IV ;
 - (e) the provisions adopted by the Managing authority and the Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:
 - monitoring and evaluation measures, including data collection arrangements ;
 - a summary of any significant problems encountered in implementing the operational programme and any measures taken, including in response to comments made under Article 67;
 - the use made of technical assistance.
 - (f) the measures taken to ensure publicity for the operational programme ;
 - (g) a declaration on compliance with Community policies during the implementation of the operational programme and, where appropriate , identifying any problems encountered and the taken to rectify them ;
 - (h) where necessary, the use made of assistance repaid to the Managing authority or to another public authority during the period of implementation of the operational programme.
3. The reports shall be judged acceptable if they contain all the information listed in paragraph 2 and permit an understanding of the implementation of the operational programme.
 4. The Commission shall reach a decision on the content of the annual report on implementation submitted by the Managing authority within two months. For the final report on the operational programme, the time limit shall be five months. If the Commission does not respond within the time limit laid down, the report shall be deemed to be accepted.

Article 66

Annual report by the Commission

1. By 31 December, the Commission shall forward to the European Parliament, to the Council, to the Economic and Social committee and to the Committee of regions a report on the actual implementation of this regulation during the preceding year. This report summarises the main developments, trends and challenges relating to implementation of the operational programmes.

2. The report shall be based on examination and assessment by the Commission of the Member States' strategic annual report referred to in Article 17, first paragraph and of any other available information. The report shall state the follow-up measures taken or to be taken by the Member States and the Commission which will enable adequate follow up to be made of the findings in the report.
3. It shall also include:
 - (a) a summary of the activities of the Fund by Member State including a breakdown by Member State of the appropriations committed and paid as well as the use of technical assistance by the Commission and the Member States ;
 - (b) an assessment of the coordination of the Fund with the Structural Funds and the European Agriculture and Rural Development Fund ;
 - (c) as soon as they become available the findings of the evaluations provided for in Article 48 ;
 - (d) when the fourth annual report is submitted and again when the report covering the final year of programming is submitted, a summary of the audits on management and control systems set up by Member States carried out on behalf of the Commission and of the outcome of audits on Fund assistance carried out by the Member State and where appropriate the financial corrections made.

Article 67

Annual examination of programmes

1. Each year when the annual implementation and audit reports referred to in Articles 65 and 60(4), are presented and in accordance with rules to be defined in agreement with the Member State and Managing authority concerned, 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, including aspects relating to the functioning of the management and control system.
2. Following that examination the Commission may make comments to the Member State and the Managing authority. 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 2000-06 programming period are available, the overall results shall be examined on the occasion of the first annual examination thereafter.

CHAPTER III

Controls

SECTION 1

RESPONSIBILITIES OF MEMBER STATES

Article 68

Sound financial management

1. Member States shall be responsible for ensuring sound financial management of operational programmes and the legality and regularity of underlying transactions.
2. They shall ensure that managing authorities, certifying authorities, Audit Authorities and any other bodies concerned receive adequate guidance on setting up the management and control systems referred to in Articles 56 to 60 to ensure that Community financing is used efficiently and correctly.
3. The Member States shall prevent, detect and correct irregularities. They shall notify these to the Commission, in accordance with the rules, and keep the Commission informed of the progress of administrative and legal proceedings.

When amounts unduly paid to a beneficiary cannot be recovered, the Member State is responsible for reimbursing the amounts lost to the budget of the European Communities, save when it proves that the loss incurred has not been caused by its irregularity or negligence.

Article 69

Management and control systems

1. Prior to the adoption of an operational programme, the Member States shall ensure that management and control systems for operational programmes have been set up in accordance with Articles 56 to 60. They shall be responsible for ensuring that the systems function effectively throughout the programming period.
2. Within three 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 the managing and certifying authorities and intermediate bodies and the internal audit systems operating in those authorities and bodies, the Audit Authority, and any other bodies carrying out audits under its responsibility.

3. This description shall be accompanied by a report by an independent audit body setting out the results of an assessment of the systems and giving an opinion on their compliance with Articles 56 to 60. In the event that the opinion contains reservations, the report shall indicate the shortcomings and their seriousness. The Member State shall draw up, in agreement with the Commission, a plan setting out the corrective measures to be taken and the timetable for their implementation.

The independent audit body shall be designated at the latest when the operational programme is adopted. The Commission may accept the Audit Authority for the operational programme as the independent audit body where it has the necessary capacity. The independent audit body must have the necessary operational independence and must carry out its work to international audit standards.

SECTION 2

RESPONSIBILITIES OF THE COMMISSION

Article 70

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 69 that the Member States have set up management and control systems on the basis of the annual control reports and its own checks that the systems function effectively during the period of implementation of the operational programmes.
2. Without prejudice to checks carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot checks to verify the effective operation of the management and control systems, which may include checks on operations included in the operational programme, with a minimum of one working day's notice. Officials or authorised representatives of the Member State may take part in such checks.
3. The Commission may require a Member State to carry out an on-the-spot check to verify the correct functioning of the systems or the correctness of one or more transactions. Commission officials or authorised Commission representatives may take part in such checks.

Article 71

Cooperation with the control bodies of the Member States

1. The Commission shall cooperate with the Audit Authorities of operational programmes to coordinate their respective control plans and inspection methods and shall immediately exchange the results of checks carried out on management and control systems in order to make the best possible use of control resources and to

avoid unjustified duplication of work. The Commission and the Audit Authorities shall meet on a regular basis, generally at least once a year, in order to examine together the annual audit report presented under Article 60 and to exchange views on other issues relating to the improvement of the management and control of the operational programmes. The Commission shall provide its comments on the control strategy presented under Article 60 not later than three months or at the first meeting following its reception.

2. In determining its own control strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of the system under Article 60 is without reservations, or where reservations have been withdrawn following corrective measures, where the control strategy of the Audit Authority is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of checks by the Commission and the Member State.
3. For those programmes, the Commission may notify the Member States concerned that it will rely principally on the opinion of the Audit Authority as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot checks only in exceptional circumstances.

TITLE VIII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

SECTION 1

BUDGET COMMITMENTS

Article 72

Budget commitments

The Community budget commitments in the operational programmes (hereinafter “budget commitments”) shall be effected annually 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 by the Commission on the basis of the decision to grant a contribution from the Fund, referred to in Article 20.

SECTION 2

PAYMENTS

Article 73

Common rules for payments

1. Payments by the Commission of the contribution from the Fund shall be made in accordance with the budget commitments. All payments shall be posted to the earliest open budget commitment.
2. Payments shall take the form of pre - financing, interim payments and payment of the balance. They shall be made to the body designated by the Member State.
3. At the latest by 31 January every year, the Member States shall send the Commission an update of the payment request forecasts for the current financial year and the subsequent financial year.
4. All exchanges concerning financial transactions between the Commission and the authorities designated by the Member States shall be made by electronic means in accordance with the implementing rules adopted by the Commission according to the procedure referred to in Article 100 (3).

Article 74

Rules for calculating interim payments and payments of the balance

Interim payments and payments of the balance shall be calculated by applying the co-financing rate for each priority to public expenditure certified under that priority on the basis of a statement of expenditure certified by the authority responsible for certification.

Article 75

Statement of expenditure

All statements of expenditure shall include, for each priority, the amount of expenditure incurred by beneficiaries in implementing the operations and the corresponding contribution from public funds. Expenditure paid by beneficiaries shall be substantiated by receipted invoices or accounting documents of equivalent probative value.

As regards aid schemes within the meaning of Article 87 of the Treaty only, expenditure certified to the Commission shall be the expenditure certified to the Commission shall be the expenditure paid by the beneficiaries for which a payment has been made by the body granting the aid.

Article 76

Accumulation of pre-financing and of interim payments

1. The cumulative total of pre-financing and interim payments made shall not exceed 95% of the contribution to the operational programme.
2. When this ceiling is reached, the certification authority shall continue transmitting to the Commission any certified expenditure on the 31 December of the year n , as well as the amounts recovered during the year for the Fund, at the latest by 31 January of year $n+1$.

Article 77

Wholeness of payment to beneficiaries

Member States shall satisfy themselves that the body responsible for making the payments ensures that the beneficiaries receive the total amount of the contribution from public funds as quickly as possible and in full. No amounts shall be deducted or withheld, nor any further specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.

SECTION 3

PRE-FINANCING

Article 78

Payment

1. Following the Commission decision approving the contribution from the Fund to an operational programme, a single pre-financing amount shall be paid by the Commission to the body designated by the Member State. This pre-financing amount shall represent 7% of the contribution from the Fund to that operational programme.
2. The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no payment request under the operational programme is sent within twenty-four months of the date on which the Commission paid the first instalment of the pre-financing amount.
3. Any interest generated by the pre-financing shall be posted to the operational programme in question and must be deducted from the amount of public expenditure declared in the final statement of expenditure.
4. The amount paid as pre-financing shall be cleared from the accounts when the operational programme is closed.

SECTION 4

INTERIM PAYMENTS

Article 79

Interim payments

The Commission shall make the interim payments, subject to available funding and after being given reasonable assurance that the management and control system for the operational programmes established by the Member State is in accordance with Articles 56 to 60. This assurance shall be based on the report by the independent audit body referred to in Article 69 (3).

Article 80

Acceptability of payment requests

1. Each interim payment made by the Commission shall be subject to the following conditions being met:
 - (a) the Commission must have been sent a payment request and statement of expenditure, in accordance with Article 73 ;
 - (b) no more than the maximum amount of assistance from the Fund may have been granted during the period for each priority ;
 - (c) the managing authority must have sent the Commission the most recent annual implementation report by the required deadline, in accordance with Article 65 (3) ;
 - (d) there may not have been any interruption or suspension of the payments as detailed in Article 84, nor any reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operations for which the expenditure was incurred according to the payment request in question.
2. Subject to available funding, the Commission shall make the interim payment no later than two months after the date on which a payment request meeting the above conditions is registered.
3. The Member State and the certification authority responsible for making the payments shall be informed as soon as possible by the Commission if one of the conditions referred to in paragraph 1 is not met.

Article 81

Procedure for payment

1. The Commission shall make the interim payment no later than 45 days after the date on which a payment request meeting the conditions referred to in the preceding Article is registered.
2. If one of these conditions is not met, the Member State and the certification authority which is entrusted with making payments shall be informed as soon as possible by the Commission.
3. The certification authority shall ensure that requests for interim payments for operational programmes are grouped together and sent to the Commission, as far as possible, on three separate occasions a year. For a payment to be made by the Commission in the current year, the latest date on which a payment request may be submitted is 31 October.

SECTION 5

PAYMENT OF BALANCE AND PROGRAMME CLOSURE

Article 82

Conditions for the payment of the balance

1. The Commission shall pay the balance provided it has received the following documents by 30 June 2016:
 - (a) a request for payment of the balance and a statement of expenditure in accordance with Article 65 ;
 - (b) the final implementation report for the operational programme, including the information set out in Article 65 ;
 - (c) a statement of validity for the request for payment of the balance provided for in Article 60(5), together with the final audit report;

The payment of the balance is subject to the acceptance of the final implementation report and of the statement of validity for the request for payment of the balance.

2. Failure to send any of the documents referred to in paragraph 1 to the Commission by 30 June 2016 at the latest shall automatically result in the decommitment of the balance, in accordance with Article 87.
3. Subject to available funding, the Commission shall pay the balance within no more than 45 days from the date on which it accepts the final report and the statement of

validity for the request for payment of the balance. Without prejudice to paragraph 5, the balance of the budgetary commitment shall be decommitted six months following the payment.

4. After 30 June 2016, no further expenditure not certified before that date may be added to any statements of expenditure.
5. Notwithstanding the results of any audits performed by the Commission or the European Court of Auditors, the balance paid by the Commission for the operational programme can be amended within 9 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.

Article 83

Conservation of documents

The managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operational programme concerned are kept available for the Commission and the European Court of Auditors. The documents shall be kept available in accordance with the national provisions on time limits for the conservation of documents and for a period of at least five years following the closure of an operational programme. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. This period shall be interrupted either in the case of legal proceedings or at the request of the Commission stating the reasons.

SECTION 6

INTERRUPTION, WITHHOLDING AND SUSPENSION OF PAYMENTS

Article 84

Interruption

1. The payment deadline shall be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months where there are doubts as to the proper functioning of the management and control systems or that officer requires additional information from the national authorities in the process of monitoring the observations made under the annual review. The Commission shall inform the Member State and the certifying authority immediately of the reasons for the interruption. The Member State shall take the necessary steps to rectify the situation as soon as possible.
2. Where it proves necessary to adopt a decision in accordance with Articles 85 and 86, the period of interruption referred to above shall be extended for a maximum period of six months.

Article 85

Withholding

1. The Commission shall decide to withhold from interim payments 20% of the sums to be reimbursed by the Commission where the essential elements of the corrective action plan referred to in Article 69(3) have been implemented and the serious deficiencies referred to in the annual report by the Audit Authority for the programme referred to in Article 60(4)(a), have been rectified but amendments still need to be made to give the Commission reasonable assurance regarding the management and control systems.
2. Any withholding decision shall be adopted by the Commission after having offered the Member State the possibility of submitting observations within a period of two months.
3. The balance of interim payments shall be paid when all the required measures have been adopted. Otherwise, a financial correction may be applied in accordance with Article 96.

Article 86

Suspension of payments

1. All or part of the interim payments at the level of priorities or programmes may be suspended by the Commission where:
 - a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments by the certification authority 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) a Member State has not complied with its obligations under Article 69.
2. The Commission may decide to suspend 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 interim payments where it considers that 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 a decision to reduce the net amount or cancel the Community contribution to the operational programme in accordance with Article 96.

SECTION 7

AUTOMATIC DECOMMITMENT

Article 87

Principles

1. The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or interim payments, or for which it has not received an acceptable payment request, as defined in Article 80, by 31 December of the second year following the year of budget commitment under the programme.
2. That part of commitments still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable payment request for it by 30 June 2016.
3. If this Regulation enters into force after 1 January 2007, the period after which the first automatic decommitment as referred to in paragraph 2 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 88

Exceptions for time-limits on decommitment

Where a subsequent Commission decision is required to authorise an aid scheme, the time limit for automatic decommitment referred to in Article 87, shall run from the date of the Commission decision subsequent to the decision approving the operational programme. The amounts involved in this derogation shall be established on the basis of a schedule sent by the Member State stating the reasons.

Article 89

Interruption of time-limits for legal proceedings and administrative appeals

The period for automatic decommitment referred to in Article 87 shall be interrupted, for the amount relating to the operations concerned, for the duration of legal proceedings or an administrative appeal having suspensory effect, on condition that the Member State sends the Commission information stating the reasons by 31 December of year n+2. For that part of commitments still open on 31 December 2015, the time limit referred to in Article 87(2) shall be interrupted under the same conditions as those for the amount relating to the operations concerned.

Article 90

Exceptions to the automatic decommitment

1. The following shall be disregarded in calculating the automatic decommitment:
 - (a) that part of the budget commitment for which a payment request has been made but whose reimbursement has been interrupted, withheld or suspended by the Commission on 31 December of year n+2. Whether these amounts are finally taken into account or not shall depend on the outcome of the problem resulting in the withholding, interruption or suspension of payment.
 - (b) that part of the budget commitment for which a payment request 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 payment request for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* must demonstrate the direct consequences on the implementation of all or part of the operational programme. .

Article 91

Procedure

1. The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of the automatic decommitment provided for in paragraph 2. The Commission shall inform the Member State and the authorities concerned of the amount of the automatic decommitment resulting from the information in its possession.
2. The Member State shall have two months' time from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the time limit referred to in Article 87.
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 a revised financing plan to spread the reduced amount of assistance over the priorities of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority in proportion.

SECTION 8

PARTIAL CLOSURE

Article 92

Partial closure

1. Partial closure of operational programmes may be made at periods selected by the Member State. Partial closure shall relate to completed operations for which a final payment has been made to the beneficiary not later than 31 December of year n-1. For the purposes of this Regulation, operations shall be deemed completed where the activities under it have been actually carried out and the beneficiary has received a final payment or the beneficiary has provided a document of equivalent effect to the managing authority.

The amount of payments corresponding to completed operations shall be identified in the statements of expenditure. Partial closure shall be made on condition that the managing authority sends the following to the Commission by 30 June of year n:

- (a) a final statement of expenditure for the operations in question ;
- (b) a declaration of validity - issued by the Audit Authority for the programme as provided for in Article 60 for the final payment request relating to the completed operations, certifying the legality and regularity of the underlying transactions.

Article 93

Documents

1. The managing authority shall keep available for the Commission a list of operations subject to partial closure for which a final payment has been made.
2. The managing authority shall ensure that all the supporting documents regarding expenditure and audits on the operations concerned shall be kept available for the Commission and the European Court of Auditors. The documents shall be kept available for a period of at least for five years following the year in which partial closure has taken place without prejudice to the rules governing State aid. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers. This period shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.
3. Any financial corrections made in accordance with Articles 95 and 96 concerning operations subject to a partial closure shall be intended as net financial corrections.

SECTION 9

USE OF THE EURO

Article 94

Use of the euro

Commission decisions on operational programmes, Commission commitments and payments, and the amounts of certified expenditure and requests for payment from the Member States shall be denominated and paid in euros, in accordance with the arrangements drawn up by the Commission under the procedure referred to in Article 100(3).

CHAPTER II

Financial corrections

SECTION 1

FINANCIAL CORRECTIONS BY THE MEMBER STATES

Article 95

Financial corrections by Member States

1. The Member States shall in the first instance bear the responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature of the conditions for the implementation or supervision of assistance and making the financial corrections required.
2. The Member State shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. The corrections made by Member State shall consist in cancelling all or part of the Community contribution. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund. The Community funds released in this way may be re-used by the Member State until December 2015 for the operational programme concerned in compliance with the arrangements in paragraph 3. Member States shall include in the annual implementation and control report sent to the Commission under Articles 60 and 65 a list of cancellation proceedings initiated in the year concerned.
3. The contribution of the Fund cancelled in accordance with paragraph 2 may not be re-used for the operation or operations that were the subject of the correction, nor,

where a financial correction is made for a systemic error, for operations where this systemic error occurred. Member States shall inform the Commission in the report referred to in Article 65 of how they have decided or propose to re-use the funds cancelled and, if appropriate, to amend the financial plan for the operational programme.

4. In the case of systemic irregularities the Member State shall extend its enquiries to cover all operations liable to be affected.
5. When amounts are to be recovered following a cancellation under paragraph 1, the competent service or body shall initiate recovery proceedings and notify the certifying and managing authorities. Recoveries shall be reported and accounted for.

SECTION 2

FINANCIAL CORRECTIONS BY THE COMMISSION

Article 96

Criteria for the corrections

1. The Commission may make financial corrections by cancelling all or part of the Community contribution to an operational programme where after carrying out the necessary examination it concludes that:
 - (a) there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme ;
 - (b) expenditure contained in a certified statement of expenditure is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph ;
 - (c) a Member State has not complied with its obligations under Article 68 prior to the opening of the correction procedure under this paragraph.
2. The Commission shall base its financial corrections on individual cases of irregularity identified, taking account of the systemic nature of the irregularity to determine whether a flat-rate or extrapolated correction should be applied. Where the case of irregularity relates to a statement of expenditure for which a positive assurance had previously been given in an annual control report, in accordance with Article 60(4)(a) in an annual control report, there will be a presumption of a systemic problem giving rise to the application of a flat-rate or extrapolated correction, unless the Member State can provide proof to rebut this presumption within two months.
3. The Commission shall, when deciding the amount of a correction, take account of the importance of the irregularity and the extent and financial implications of the deficiencies found in the operational programme concerned.

4. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding their financial consequences, after examining the measures taken by the Member State concerned under Article 69, the reports supplied under Regulation (EC) No 1681/94, and any replies from the Member State.

Article 97

Procedure

1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.
2. Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the files concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to above. The Commission shall take account of any evidence supplied by the Member State within the time limits.
3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them. The Commission shall take a decision on the financial correction in the absence of agreement within six months of the date of the hearing. If no hearing takes place, the six-month period shall begin to run from the date of reception of the Member State's rejection of the invitation to a hearing.

Article 98

Repayment

1. Any repayment due to be made to the Commission shall be effected before the due date indicated in the order for recovery [drawn up in accordance with Article 72 of the Implementing rules of the Financial Regulation applicable to the general budget of the European Communities¹⁹. This due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate

¹⁹ Règlement (EC) No 2352/2002, JO L 351, 28 .12.2002, p. 29.

of such interest shall be one and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

Article 99

Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 96 and to recover state aid under Article 14 of Regulation (EC) No 659/1999.

TITLE IX

COMMITTEE

Article 100

Committee and procedures

1. The Commission shall be assisted by the European Fisheries Fund Committee (hereinafter: the “Committee”).
2. This committee is composed of representatives of the Member States and chaired by a representative from the Commission. It shall be created under the auspices of the Commission.
3. Where reference is made to this Article, the management procedure laid down in Article 4 and 7 of Decision 1999/468/EC shall apply.
4. The period referred to in Article 4(3) of Decision 1999/468/EC is set at one month.
5. The committee shall adopt its rules of procedure.

Article 101

Implementing rules

1. The implementing rules for this Regulation shall be adopted in accordance with the procedure laid down in Article 100.
2. The type of technical assistance measures implemented by the Commission and provided for in Article 45(1), is established in accordance with in the procedure laid down in Article 100 .

TITLE X

FINAL PROVISIONS

Article 102

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of Regulations (EEC) No 2052/88, (EEC) 4253/88, (EC) No 1164/94, (EC) 1260/1999 and (EC) 2792/1999, or any other legislation which applied to such assistance on 31 December 2006.
2. In preparing Community assistance, the Commission shall take account of any measures already approved by the Council or Commission before the entry into force of this Regulation and having financial repercussions during the period covered by that assistance.
3. Partial sums committed for assistance approved by the Commission between 1 January 2000 and 31 December 2006 for which the documents required for closure of the assistance have not been sent to the Commission by the deadline for submitting the final report shall be automatically decommitted by the Commission no later than 31 December 2010, giving rise to the repayment of amounts unduly paid. The documents required for closure of the assistance shall be the request for payment of the balance, the final implementation and inspection report and the statement drawn up by a person or department having a function independent of the managing authority summarising the conclusions of the checks carried out and assessing the validity of the request for payment of the final balance and the legality and regularity of the transactions covered by the final certificate of expenditure, as referred to in Article 38(1) of Regulation (EC) No 1260/1999.

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

Article 103

Repeal of previous Regulations

Regulations (EC) No 1263/1999 and No 2792/1999 are hereby repealed with effect from 1 January 2007, without prejudice to Article 102.

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

Article 104

Review clause for this Regulation

On the basis of a proposal from the Commission, the Council shall review this Regulation by 31 December 2013 at the latest.

Article 105

Entry into force

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

It shall apply as from 1 January 2007.

However, Article 14 shall apply with effect from the entry into force of the present regulation.

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

Done at Brussels, [...].

For the Council
The President
[...]

ANNEX I

In accordance with the Communication on the Financial Perspectives adopted by the Commission on 10 February 2004, the annual breakdown of commitment appropriations for the European Fisheries Fund, in 2004 prices, shall be as follows:

€ million

2007	2008	2009	2010	2011	2012	2013
655	678	701	713	726	738	752

For all the regions covered by the Convergence Objective, in the 15 Member States, the resources available for commitment, in 2004 prices, shall be €2 015 million for the 2007-13 period.

€ million

2007	2008	2009	2010	2011	2012	2013
293	293	291	288	286	283	281

A significant effort shall be made to concentrate budget resources on the new Member States covered by the Convergence Objective. The resources available for commitment to these Member States, in 2004 prices, shall be €1 702 million for the 2007-13 period.

€ million

2007	2008	2009	2010	2011	2012	2013
184	207	232	247	262	277	293

75% of the commitment appropriations available to the Fund, in real terms, must be committed to the regions covered by the Convergence Objective.

ANNEX II

MAXIMUM Rates of PUBLIC AID

Rates of financial contribution

For all the measures referred to in title IV, the limits on the Community financial participation (A), total public financial participation (national, regional and others) of the Member State concerned (B) and , where appropriate, financial participation by private beneficiaries (C) shall be subject to the following conditions, expressed as a percentage of eligible costs .

Group 1: (non productive investments)

Permanent withdrawal premium (article 25), temporary cessation premium (article 26); socio economic compensation (article 28); measures for the sustainable development of coastal fishing areas (article 43); aqua- environmental measures (article 31); public and animal health measures (article 32); collective actions (article 36); measures intended to protect and develop aquatic fauna (article 37); fishing port facilities (article 38); promotion and development of new markets (article 39); pilot projects (article 40); transformation and reassignment of fishing vessels (article 41); technical assistance (article 45).

Group 2: (productive investments)

Measures for the sustainable development of coastal fishing areas (article 43); investments on board fishing vessels (article 27); investments in aquaculture (article 30); investments in processing and marketing of the fishery products (article 34); promotion and development of new markets (article 39).

Group 3

- In the framework of fishing effort adjustment plans under article 23(a) first indent:
 - Permanent withdrawal premiums (article 25) ;
 - temporary cessation premiums (article 26) ;
 - socio-economic compensations (article 28).
- Measures for small-scale coastal fishing under article 27a, (3) and (4).

Group 4

Pilot projects others other than those carried out by public bodies (article 40).

Aid intensity and rates of financial contribution for the operations financed under this regulation.

	Group 1	Group 2	Group 3	Group 4
Regions covered by the Convergence Objective	A≤75%	A≤30% B≥10%	A≤85%	A≤60% B≥20%

	$B \geq 25\%$	$C \geq 60\% (*)$	$B \geq 15\%$	$C \geq 20\%$
Regions not covered by the Convergence Objective	$A \leq 50\%$ $B \geq 50$	$A \leq 15\%$ $B \geq 15\%$ $C \geq 70\% (*)$	$A \leq 65\%$ $B \geq 35\%$	$A \leq 30\%$ $B \geq 30\%$ $C \geq 40\%$
Outermost regions and outlying Greek islands which are under a handicap due to distant location	$A \leq 85\%$ $B \geq 15\%$	$A \leq 42,5\%$ $B \geq 7,5\%$ $C \geq 50\% (*)$	$A \leq 85\%$ $B \geq 15\%$	$A \leq 65\%$ $B \geq 15\%$ $C \geq 20\%$

(*) The rate of private sector for measures under article 27a(2), is reduced by 20%.