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COUNCIL REGULATION (EC) No 1198/2006

of 27 July 2006

on the European Fisheries Fund

(OJ L 223, 15.8.2006, p. 1)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Regulation (EU) No 387/2012 of the European Parliament and of the Council of 19 April 2012	L 129	7	16.5.2012

Amended by:

► <u>A1</u>	Treaty of Accession of Croatia (2012)	L 112	10	24.4.2012
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COUNCIL REGULATION (EC) No 1198/2006
of 27 July 2006
on the European Fisheries Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Whereas:

- (1) The development of the Community fishing fleet must be regulated in particular according to 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 Policy ⁽⁴⁾.
- (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 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 to 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.
- (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 (hereinafter EFF).

⁽¹⁾ Opinion delivered on 6 July 2005 (not yet published in the Official Journal).

⁽²⁾ OJ C 267, 27.10.2005, p. 50. Opinion delivered following non-compulsory consultation.

⁽³⁾ OJ C 164, 5.7.2005, p. 31. Opinion delivered following non-compulsory consultation.

⁽⁴⁾ OJ L 358, 31.12.2002, p. 59.

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- (6) Since the principal objective of this Regulation, namely to further the common fisheries policy, cannot be sufficiently achieved by the Member States given the structural problems encountered in the development of the fisheries sector and the limits on the financial resources of the Member States in an enlarged Union, and can therefore be better achieved at Community level by providing multi-annual financing focused on the relevant priorities, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve this objective.
- (7) The common fisheries policy and therefore the EFF must incorporate the Community's priorities for sustainable development as defined in the conclusions of the Lisbon European Council of 23 and 24 March 2000 and the Gothenburg European Council of 15 and 16 June 2001.
- (8) Programming should ensure coordination of the EFF with other funds geared to sustainable development and with the Structural Funds and other Community funds.
- (9) The activity of the EFF and the operations it helps to finance should be compatible with other Community policies and comply with all Community legislation.
- (10) Action by the Community should be complementary to action carried out by Member States or it should seek to contribute to that action. In order to ensure significant added value partnership should be strengthened. This partnership, with full regard to the national rules and practices of the Member States, concerns regional, local and other public authorities, as well as other appropriate bodies, 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, implementation, monitoring and evaluation of assistance.
- (11) 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 Union.
- (12) If the activities of the EFF 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 control. Without prejudice to the powers vested in the Commission, implementing and inspecting assistance should be primarily the responsibility of the Member States.

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- (13) Articles 2 and 3 of the Treaty provide for the elimination of inequalities, and the promotion of equality, between men and women.
- (14) 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.
- (15) The appropriations available under the EFF should be indexed on a flat-rate basis for programming.
- (16) 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 EFF 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 EFF by encouraging the use of appropriate forms of assistance.
- (17) 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, Member State should adopt, following a dialogue with the Commission, a national strategic plan on all relevant aspects of the common fisheries policy.
- (18) In order to address the need for simplification and decentralisation, programming and financial management should be carried out at the level of the operational programme and priority axes alone, with programme complements and Community support frameworks being discontinued.
- (19) The programming system should be simplified. To that end the activities of the EFF should take the form of one single operational programme per Member State, in accordance with its national structure. The programming exercise shall cover the period from 1 January 2007 to 31 December 2013.
- (20) The adoption by the Council of multi-annual recovery plans and management plans are an absolute priority and should be accompanied by fishing-effort adjustment plans under the EFF.
- (21) 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 or other arrangement should also give rise to multi-annual fishing-effort management plans aimed at adjusting the Community fishing fleet to the new situation.
- (22) 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 of Regulation (EC) No 2371/2002.

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- (23) Provisions should also be laid down for adjusting fishing effort in connection with the adoption of national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002.
- (24) The Community fishing fleet should be adjusted in order to adapt it to the available and accessible resources.
- (25) Provisions should be laid down for support for investment on board, in particular to address the need to restructure the Community fishing fleet by supporting fishers and vessel owners to replace engines by new engines with the same or less power.
- (26) In addition, specific provisions should be laid down in order to address the specificities of small scale coastal fisheries.
- (27) Socio-economic accompanying measures are needed to implement the restructuring of the Community fishing fleet.
- (28) Detailed rules should be laid down for granting allowances and financial compensation to fishers and owners of fishing vessels in cases of temporary cessation of fishing activities.
- (29) It is vital for the fisheries sector that a sustainable balance be achieved between aquatic resources and their exploitation, having due regard to environmental impact. Appropriate measures should therefore be adopted not only in order to safeguard the food chain but also for aquaculture and the processing industry.
- (30) Detailed rules should be laid down for granting aid to aquaculture, inland fishing, processing and marketing of fisheries and aquaculture products, while ensuring that these sectors retain economic viability. For that purpose, it is necessary to identify a limited number of priority objectives for assistance and to focus the structural aid for aquaculture, processing and marketing of fisheries and aquaculture products on micro, small and medium-sized enterprises with priority given to micro and small-sized enterprises.
- (31) Measures of common interest with a broader scope than measures normally undertaken by private enterprises should also be supported by the EFF.
- (32) There is a need to provide accompanying measures for the common fisheries policy, in particular, by reducing its socio-economic impact by implementing local development strategies for the sustainable development of fisheries areas.

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- (33) Having regard to the diversity of situations and areas throughout the Community, the policy for the development of fisheries areas should form part of an integrated approach based on an appropriate territorial strategy, be adapted to the local context, be as decentralised as possible, give preference to the participation of actors on the ground, be based on a bottom-up approach, allow small-scale operations and ensure the substantial participation of private sector actors.
- (34) By way of technical assistance the EFF should provide support for evaluations, studies and exchanges of experience in order to facilitate the implementation of the operational programme and to promote innovative approaches and practices for simple and transparent implementation.
- (35) The implementation of the operations of the EFF by the Member States through shared management 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.
- (36) The effectiveness and impact of the operations of the EFF also depend on improved and more thorough evaluation. The responsibilities of the Member States and the Commission in this regard and the arrangements to ensure the reliability of evaluation should be laid down.
- (37) In the interest 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.
- (38) It is appropriate to establish ceilings for public contribution per operation.
- (39) It is also appropriate to establish ceilings for the contribution by the EFF in relation to the total public expenditure per priority axis.
- (40) In order to guarantee efficient and correct implementation, the obligations of the Member States should be laid down with regard to management and control systems, the certification of expenditure and the prevention, detection and correction of irregularities and infringements of Community law. With respect to management and control it is necessary, in particular, to establish the modalities by which Member States give the assurance that the systems are in place and function satisfactorily.
- (41) Member States should adopt adequate measures to guarantee the proper functioning of management and control systems. To that end, a managing authority, a certifying authority and an audit authority should be designated for each operational programme and their responsibilities should be specified. These responsibilities should relate primarily to the sound financial implementation, organisation of evaluation, certification of expenditure, audit and compliance with Community law. Provision should be made for regular meetings between the Commission and the national authorities concerned in order to monitor the assistance.

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- (42) It should be stipulated that the monitoring committee is a body which is appointed by the Member State for the purpose of ensuring the quality of implementation of an operational programme.
- (43) Indicators and reports on implementation are essential for monitoring and should be better defined so that they reflect reliably the progress and the quality of the implementation of the operational programme.
- (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 a regular cash flow is ensured. A pre-financing of 7 % of the contribution from the EFF would help to speed up the implementation of the operational programme.
- (46) In addition to the suspension of payments where a serious deficiency is detected in the management and control systems, there should be measures which allow the authorising officer by delegation to interrupt payments where there is evidence to suggest a significant deficiency in the sound operation of these systems or which allow for the Commission to make a deduction from payments if the Member State concerned has not implemented all remaining measures in a corrective plan of action.
- (47) In order to ensure the sound management of Community resources, improvements should be made to the forecasting and implementing of expenditure. To that end Member States should regularly send the Commission their forecasts regarding the use of Community resources and any delays in financial implementation should give rise to repayment of advances and to automatic decommitments.
- (48) Procedures for closure should be simplified by offering the possibility to those Member States which so wish, in accordance with the schedule which they select, to partially close their operational programme with respect to the operations completed. The appropriate framework for doing so should be provided.
- (49) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ by the management procedure provided for in Article 4 of that Decision. However, in certain instances and for the sake of efficiency, the consultative procedure provided for in Article 3 of that Decision is the most adequate one.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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- (50) Detailed transitional provisions should be laid down to allow preparation of new programming immediately upon entry into force of this Regulation and to ensure that assistance to Member States is not interrupted pending the adoption of the operational programme in accordance with this Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I**OBJECTIVES AND GENERAL RULES ON ASSISTANCE***CHAPTER I****Scope and definitions****Article 1***Scope**

This Regulation establishes the European Fisheries Fund (hereinafter EFF) and defines the framework for Community support for the sustainable development of the fisheries sector, fisheries areas and inland fishing.

*Article 2***Geographical scope**

1. The measures provided for in this Regulation shall apply in the entire territory of the Community.
2. By derogation from paragraph 1, for assistance provided under Chapter IV of Title IV relating to the sustainable development of fisheries areas, Member States shall select the eligible areas on the basis of the criteria laid down in Article 43(3) and (4).

*Article 3***Definitions**

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'fisheries sector': the sector of the economy, including all activities of production, processing and marketing of fisheries and aquaculture products;
- (b) 'fisher': any person engaging in professional fishing on board an operational fishing vessel, as recognised by the Member State;
- (c) 'fishing vessel': any vessel within the meaning of Article 3 point (c) of Regulation (EC) No 2371/2002;

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- (d) 'aquaculture': 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;
- (e) 'fisheries area': an area with sea or lake shore or including ponds or a river estuary and with a significant level of employment in the fisheries sector;
- (f) 'micro, small and medium — sized enterprise': a micro, small or medium — sized enterprise as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁾;
- (g) 'operational programme': the single document drawn up by the Member State and approved by the Commission containing a coherent set of priority axes to be achieved with the aid of the EFF;
- (h) 'programming': 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 in order to achieve the priority goals of the EFF;
- (i) 'priority axis': one of the priorities in an operational programme comprising a group of measures which are related and have specific measurable goals;
- (j) 'measure': a set of operations aimed at implementing a priority axis;
- (k) 'operation': a project selected according to criteria laid down by the monitoring committee and implemented by one or more beneficiaries allowing achievement of the goals of the priority axis to which it relates;
- (l) 'beneficiary': a natural or legal person who is the ultimate recipient of public aid;
- (m) 'public expenditure': any public contribution to the financing of operations whose origin is the budget of the State, of regional and local authorities, of the European Communities and any similar expenditure. Any contribution to the financing of operations whose origin is the budget of public-law bodies or associations of one or more regional or local authorities or public-law bodies acting in accordance with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽²⁾ shall be regarded as public contribution;

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

⁽²⁾ OJ L 134, 30.4.2004, p. 114.

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- (n) ‘Convergence objective’: the objective of the action for the least developed Member States and regions according to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down the general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 ⁽¹⁾;
- (o) ‘Non-Convergence objective’: the objective covering the Member States and regions not eligible under the Convergence objective as defined in point (n);
- (p) ‘intermediate body’: any public or private body or service which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority vis-à-vis beneficiaries implementing operations;
- (q) ‘irregularity’: any infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

*CHAPTER II****Objectives and missions****Article 4***Objectives**

Assistance under the EFF shall aim to:

- (a) support the common fisheries policy so as to ensure exploitation of living aquatic resources and support aquaculture in order to provide sustainability in economic, environmental and social terms;
- (b) promote a sustainable balance between resources and the fishing capacity of the Community fishing fleet;
- (c) promote a sustainable development of inland fishing;
- (d) strengthen the competitiveness of the operating structures and the development of economically viable enterprises in the fisheries sector;
- (e) foster the protection and the enhancement of the environment and natural resources where related to the fisheries sector;
- (f) encourage sustainable development and the improvement of the quality of life in areas with activities in the fisheries sector;
- (g) promote equality between men and women in the development of the fisheries sector and fisheries areas.

⁽¹⁾ OJ L 210, 31.7.2006, p. 25.



Article 5

Missions

Support for the fisheries sector shall be provided by the 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. They shall accompany and supplement, where necessary, other Community instruments and policies.

CHAPTER III

Principles of assistance

Article 6

Complementarity, consistency and compliance

1. The EFF shall provide assistance which complements national, regional and local actions, integrating into them the priorities of the Community.

2. The Commission and the Member States shall ensure that assistance from the EFF is consistent with the policies, priorities and activities of the Community and complementary to other financial instruments of the Community. This consistency and complementarity shall be indicated in particular in the operational programme.

3. Operations financed by the EFF shall comply with the provisions of the Treaty and of the acts adopted thereunder.

4. In accordance with their respective responsibilities, the Commission and the Member States shall ensure coordination between assistance from the EFF and the European Agricultural Fund for Rural Development (EAFRD), established by Council Regulation (EC) No 1290/2005 ⁽¹⁾, the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund and of other Community financial instruments.

5. Operations financed by the EFF shall not increase fishing effort.

Article 7

State aid

1. Without prejudice to paragraph 2 of this Article, 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 financial contributions from Member States to operations co-financed by the EFF and provided as part of an operational programme.

⁽¹⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209, 11.8.2005, p. 1).

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3. National provisions setting up public financing going beyond the provisions of this Regulation concerning financial contributions, as provided for in paragraph 2, shall be treated as a whole on the basis of paragraph 1.

*Article 8***Partnership**

1. The objectives of the EFF shall be pursued within the framework of close cooperation (hereinafter referred to as ‘partnership’) between the Commission and the Member State. Member States shall organise, in accordance with the current national rules and practices, a partnership with the authorities and bodies which it designates, such as:

- (a) the competent regional, local and other public authorities;
- (b) the economic and social partners;
- (c) any other appropriate body.

2. Member States 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 through integration of environmental protection and enhancement.

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

4. The partnership shall cover the preparation, implementation, monitoring and evaluation of the operational programme. Member States shall involve all appropriate partners in the different stages of programming within the time limit set for each stage.

5. Each Member State shall organise a consultation on the national strategic plan, according to the detailed arrangements that it considers most appropriate.

*Article 9***Proportionality**

1. Implementation of an operational programme shall be the responsibility of the Member State. That responsibility shall be exercised at the appropriate territorial level in accordance with the institutional arrangements of each Member State and this Regulation.

2. The means employed by the Commission and Member States may vary according to the total amount of public expenditure allocated to the operational programme. Such variation shall apply in particular to the means used for evaluation, control, and participation by the Commission in the monitoring committee provided for in Article 63 and for the annual reports on implementation of operational programmes.



Article 10

Shared management

1. The Community budget allocated to the EFF shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 53(1)(b) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, with the exception of the technical assistance referred to in Article 46(1) of this Regulation which shall be implemented by the Commission within the framework of direct management.

The principle of sound financial management shall be applied in accordance with Article 48(2) of Regulation (EC, Euratom) No 1605/2002.

2. The Commission shall exercise its responsibility for implementing the general budget of the European Union in the following ways:

- (a) the Commission shall check the existence and proper functioning of management and control systems in the Member States in accordance with Articles 70 and 73;
- (b) the Commission shall interrupt the payment deadline or suspend all or part of payments in accordance with Articles 88 and 89, if the national management and control systems fail, and shall apply any other financial correction required, in accordance with the procedures described in Articles 98 and 99;
- (c) the Commission shall check reimbursement of pre-financing and automatically decommit budget commitments in accordance with Articles 81(2), 90 to 94.

3. The provisions of Title II of part two of Regulation (EC, Euratom) No 1605/2002 shall apply to assistance from the EFF.

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 the gender perspective are promoted during the various stages of implementation of the EFF, including the design, implementation, monitoring and evaluation.

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 commitments from the EFF for the period 2007 to 2013 shall be EUR 3 849 million at 2004 prices in accordance with the annual breakdown set out in Annex I.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

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2. 0,8 % of the resources referred to in paragraph 1 shall be allocated to technical assistance for the Commission as defined in Article 46(1).
3. For the purpose of programming and subsequent inclusion in the general budget of the European Union, the amounts referred to in paragraph 1 shall be indexed at 2 % per year.
4. The breakdown of budgetary resources provided for in paragraph 1 and not allocated in accordance with paragraph 2 shall be such as to achieve a significant concentration on the regions eligible under the Convergence objective.

*Article 13***Maximum level of transfers**

1. In order to contribute to the objectives of adequately concentrating cohesion funding on the least developed regions and Member States and reducing disparities in average per capita aid intensities resulting from capping, the maximum level of transfer from the Funds referred to in paragraph 2 to each individual Member State pursuant to this Regulation shall be as follows:
 - for Member States whose average 2001-2003 GNI per capita (PPS) is under 40 % of the EU-25 average: 3,7893 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 40 % and below 50 % of the EU-25 average: 3,7135 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 50 % and below 55 % of the EU-25 average: 3,6188 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 55 % and below 60 % of the EU-25 average: 3,5240 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 60 % and below 65 % of the EU-25 average: 3,4293 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 65 % and below 70 % of the EU-25 average: 3,3346 % of their GDP
 - for Member States whose average 2001-2003 GNI per capita (PPS) is equal to or above 70 % and below 75 % of the EU-25 average: 3,2398 % of their GDP
 - thereafter, the maximum level of transfer is reduced by 0,09 percentage point of GDP for each increment of 5 percentage points of average 2001-2003 per capita GNI (PPS) as compared to the EU-25 average.

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2. The ceilings referred to in paragraph 1 include the total annual allocations from the EFF for any Member State pursuant to this Regulation, and from the ERDF, the ESF and the Cohesion Fund pursuant to Regulation (EC) No 1083/2006 including the contribution from the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument and of the Instrument for Pre-Accession Assistance and from the part of the EAFRD originating from the Guidance Section of the European Agricultural Guidance and Guarantee Fund.

3. Calculations of GDP by the Commission shall be based on the statistics published in April 2005. Individual national growth rates of GDP for 2007-2013, as projected by the Commission in April 2005, shall be applied for each Member State separately.

*Article 14***Financial distribution**

The Commission shall make an annual indicative breakdown 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:

(a) the size of the fisheries sector in the Member State,

(b) the scale of adjustment needed to the fishing effort,

and

(c) the level of employment in the fisheries sector,

while taking account of particular situations and needs and past commitment appropriations.

TITLE II

STRATEGIC APPROACH*CHAPTER I****National strategic plan****Article 15***National strategic plan**

1. Each Member State shall adopt, following an appropriate consultation with the partners, a national strategic plan covering the fisheries sector and submit it to the Commission at the latest when submitting the operational programme.

The national strategic plan shall be the subject of a dialogue between the Member State and the Commission.

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2. The national strategic plan shall contain, where relevant to the Member State, a summary description of all aspects of the common fisheries policy, and set out the priorities, objectives, the estimated public financial resources required and deadlines for its implementation with particular regard to the strategy for:

- (a) the management and adjustment of the Community fishing fleet and, in particular, the adjustment of fishing effort and capacity with regard to the evolution of fisheries resources, the promotion of environmentally-friendly fishing methods and a sustainable development of fishing activities;
- (b) the sustainable development of the aquaculture sector;
- (c) the sustainable development of the processing and marketing of fisheries and aquaculture products;
- (d) the sustainable development of inland fishing;
- (e) the sustainable development of fisheries areas, including the criteria for targeting the priority areas;
- (f) the competitiveness of the fisheries sector, including the improvement of its structure, organisation and its working environment;
- (g) preserving human resources in the fisheries sector, in particular through upgrading professional skills, securing sustainable employment and enhancing the position and the role of women;
- (h) the protection and enhancement of the aquatic environment related to the fisheries sector.

3. In addition, the national strategic plan shall contain, where relevant to the Member State, additional appropriate information on the priorities, objectives, the estimated public financial resources required and deadlines with particular regard to the strategy for:

- (a) meeting the requirements for inspection and control of fishing activities and data and information collection on the common fisheries policy;
- (b) the supply of fisheries products and the development of fishing activities outside Community waters.

*CHAPTER II**Strategic follow up**Article 16***Strategic debate**

1. By 31 December 2011, the Commission shall organise a debate with Member States on the content and the progress of the implementation of the national strategic plans, on the basis of written information submitted by Member States, with a view to encourage the exchange of best practice among Member States.

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2. The Commission shall inform the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the outcome of the debate referred to in paragraph 1.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the EFF*Article 17***Preparation and approval of the operational programme**

1. Each Member State shall draw up an operational programme to implement the policies and priorities to be co-financed by the EFF. The operational programme shall be coherent with the national strategic plan.
2. The activities of the EFF shall take the form of one single operational programme per Member State, in accordance with its national structure.
3. The Member State shall draw up its operational programme upon completion of close consultations with the regional, local, economic and social partners in the fisheries sector and all other appropriate bodies, in accordance with its national structure and the partnership provided for in Article 8.
4. The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 20, in due time to allow its adoption as soon as possible.
5. The Commission shall appraise the proposed operational programme to determine whether it contributes to the objectives set out in Article 4, the guiding principles set out in Article 19 and the relevant part of the national strategic plan, taking into account the *ex ante* evaluation referred to in Article 48.

When the Commission, within two months following the receipt of the proposed operational programme, considers that the programme is not coherent with the objectives set out in Article 4, the guiding principles set out under Article 19 or the relevant part of the national strategic plan, it may request the Member State to provide all necessary additional information and, where appropriate, to adapt the proposed programme accordingly.

6. Thereafter, the Member State shall submit its operational programme to the Commission which shall adopt a decision approving it as soon as possible but no later than four months after the submission.

*Article 18***Duration and revision of the operational programme**

1. The operational programme shall cover the period between 1 January 2007 and 31 December 2013.

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2. The operational programme may be re-examined where a major difficulty has arisen in its 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, in agreement with the Member State concerned, after approval by the monitoring committee provided for in Article 63.

A revision shall take into account, in particular, the interim evaluation, the annual reports on implementation and the annual examinations provided for in Article 49, Article 67 and Article 69 respectively and important changes to the common fisheries policy.

3. The Commission shall adopt its decision on a request for revision of the operational programme as soon as possible but not later than two months after the submission of the request by the Member State, provided that the content of the revised operational programme is in accordance with Article 20. Detailed rules shall be defined in accordance with the procedure referred to in Article 101(3).

*Article 19***Guiding principles for the operational programme**

In the preparation of the operational programme provided for in Article 17 and the implementation of the operational programme, Member States shall take into account the following guiding principles:

- (a) consistency with the principles of the common fisheries policy and the national strategic plan in order to achieve, in particular, a stable and enduring balance between fishing capacity and fishing opportunities;
- (b) enhancement of a harmonious, balanced and sustainable development of economic activities, jobs and human resources, as well as protection and the improvement of the environment;
- (c) an appropriate allocation of the available financial resources between the priority axes and, particularly, where relevant, an appropriate level of financing for operations under Chapter I of Title IV (Priority axis 1: measures for the adaptation of the Community fishing fleet);
- (d) promotion of the operations contributing to the Lisbon strategy;

Operations aiming at promoting a sustainable level of employment in the fisheries sector in particular through enhancing the quality of jobs, providing access to the profession for young people and stimulating innovation throughout the sector shall be encouraged;

- (e) promotion of the operations contributing to the Gothenburg strategy and particularly those enhancing the environmental dimension in the fisheries sector;

Operations aiming at reducing the impact of activities in the fisheries sector on the environment and promoting environmentally friendly production methods shall be encouraged;

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- (f) improvement of the situation of the human resources in the fisheries sector through operations aiming at upgrading and diversifying professional skills, developing lifelong learning and improving working conditions and safety;
- (g) encouragement of operations with high added value through the development of innovative capacities that provide for high quality standards and meet consumer needs for fisheries and aquaculture products;

Operations promoting transparency of environmentally friendly production methods to consumers shall be encouraged;
- (h) contribution to a better supply to, and to a sustainable development of, the community market of fisheries and aquaculture products;
- (i) promotion, during the various stages of the implementation of the operational programme, of gender balance in the fisheries sector through operations aiming, in particular, at reducing gender based segregation in the labour market;
- (j) promotion of an integrated sustainable development of the fisheries areas by fostering their inherent potential and improving quality of life;
- (k) where relevant, improvement of the institutional and administrative capacities aiming at a good governance of the common fisheries policy and an efficient implementation of the operational programme.

*Article 20***Content of the operational programme**

1. The operational programme shall contain:
 - (a) a synthesis of the situation of the policy areas eligible for support in terms of strengths and weaknesses;
 - (b) a description and a justification of the priority axes chosen, having regard to the relevant part of the national strategic plan and the guiding principles set out under Article 19, as well as the expected impact resulting from the *ex ante* evaluation referred to in Article 48;
 - (c) specific targets set for each priority axis. Those targets shall be quantified, where they lend themselves to quantification, using a limited number of indicators taking into account the principle of proportionality. The indicators must make it possible to measure progress in relation to the baseline situation and the effectiveness of the specific targets set for each priority axis;
 - (d) a summary description of the principal measures envisaged for implementing the priority axes;

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- (e) information on complementarity with the measures under the EAFRD, the Structural Funds and the Cohesion Fund, where relevant;
- (f) a financing plan containing two tables, each showing separately, where relevant, the appropriations earmarked for the Convergence objective and the Non-Convergence objective:
 - (i) a table breaking down for each year the amount of the total financial allocation envisaged for the contribution from the EFF;
 - (ii) a table specifying, for the whole programming period and for each priority axis, the amount of the financial allocation envisaged for the Community contribution and the national public contributions, the rate of contribution from the EFF for each priority axis and the amount allocated to technical assistance;
- (g) the implementing provisions for the operational programme, including:
 - (i) designation by the Member State of the entities provided for in Article 58;
 - (ii) a description of evaluation and monitoring systems as well as the composition of the monitoring committee provided for in Article 63;
 - (iii) information about the competent body for receiving the payments made by the Commission and the body or bodies responsible for making payments to the beneficiaries;
 - (iv) a definition of procedures for mobilisation and circulation of financial flows in order to ensure their transparency;
 - (v) the elements aiming at ensuring the information and publicity of the operational programme as referred to in Article 51;
 - (vi) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by this Regulation;
- (h) information on the application of Article 8.

2. For each of the priority axes provided for in Title IV, the Member State shall determine in its operational programme the conditions and procedures for their application. The programme shall in particular indicate clearly the purpose of each priority axis planned.

▼BTITLE IV
PRIORITY AXES

CHAPTER I

Priority axis 1: measures for the adaptation of the Community fishing fleet

Article 21

Scope

Support from the EFF targeting the adaptation of the Community fishing fleet shall concern:

- (a) public aid for owners of fishing vessels and fishers affected by fishing effort adjustment plans where these form part of the following:
 - (i) recovery plans as referred to in Article 5 of Regulation (EC) No 2371/2002;
 - (ii) emergency measures as referred to in Articles 7 and 8 of Regulation (EC) No 2371/2002;
 - (iii) 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;
 - (iv) management plans as referred to in Article 6 of Regulation (EC) No 2371/2002;
 - (v) measures as referred to in Articles 9 and 10 of Regulation (EC) No 2371/2002;
 - (vi) national decommissioning schemes as part of the obligations laid down in Articles 11 to 16 of Regulation (EC) No 2371/2002 on the adjustment of fishing capacity of the Community fishing fleet;
- (b) public aid for temporary cessation of fishing activities in accordance with Article 24(1)(vii);
- (c) investments on board fishing vessels and selectivity in accordance with Article 25;
- (d) public aid for small-scale coastal fishing in accordance with Article 26;
- (e) socio-economic compensation for the management of the Community fishing fleet in accordance with Article 27;
- (f) public aid in the framework of rescue and restructuring plans in accordance with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽¹⁾.

⁽¹⁾ OJ C 244, 1.10.2004, p. 2.

▼B*Article 22***Content of fishing effort adjustment plans**

1. Each Member State shall lay down in its national strategic plan its policy for adjusting fishing effort, with a view to fulfil the obligations laid down in Article 11(1) of Regulation (EC) No 2371/2002. It shall accord priority to the financing of the operations referred to in Article 21(a)(i).

2. Fishing effort adjustment plans may include all the relevant measures provided for in this Chapter.

3. In the cases provided for in Article 21(a)(i), (ii) and (iv), the fishing effort adjustment plans shall be adopted by the Member States within six months following the date of the Council or Commission decision.

In the cases provided for in Article 21(a)(iii), the Member States shall adopt the fishing effort adjustment plans for the fishing vessels and fishers affected, within six months following the notification by the Commission.

4. Each year the Member States shall communicate in the annual and final reports on implementation referred to in Article 67 the results achieved in implementing their fishing effort adjustment plans. The results shall be measured using the relevant indicators defined in the operational programmes.

*Article 23***Public aid for permanent cessation of fishing activities**

1. The EFF shall contribute to financing of the permanent cessation of fishing activities of fishing vessels, provided that such cessation forms part of a fishing effort adjustment plan referred to in Article 21(a). The permanent cessation of fishing activities of a fishing vessel may be achieved only by:

- (a) the scrapping of the fishing vessel;
- (b) its reassignment, under the flag of a Member State and registered in the Community for activities outside fishing;
- (c) its reassignment for the purpose of the creation of artificial reefs. Member States shall ensure that such operations are preceded by an environmental impact assessment and contribute to the objectives referred to in Article 38(2)(a).

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

2. The permanent cessation of fishing activities of fishing vessels shall be programmed in the form of national decommissioning schemes which shall not exceed two years from the date of their entry into force.

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3. To facilitate the implementation of 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 aid taking into account the best cost/effectiveness ratio on the basis of objective criteria, such as:

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

*Article 24***Public aid for temporary cessation of fishing activities**

1. The EFF may contribute to the financing of aid measures for the temporary cessation of fishing activities for fishers and the owners of fishing vessels for a maximum duration, during the period 2007 to 2013, of:

- (i) 12 months, which may be extended by up to 12 months, in the context of the fishing effort adjustment plans referred to in Article 21(a)(i);
- (ii) three months in the event of Member States emergency measures as referred to in Article 8 of Regulation (EC) No 2371/2002, in the context of the fishing effort adjustment plans referred to in Article 21(a)(ii);
- (iii) six months in the event of Commission emergency measures as referred to in Article 7 of Regulation (EC) No 2371/2002, in the context of the fishing effort adjustment plans referred to in Article 21(a)(ii);
- (iv) six months, which may be extended by up to six months, in the context of the fishing effort adjustment plans referred to in Article 21(a)(iii);
- (v) eight months, in the context of the fishing effort adjustment plans referred to in Article 21(a)(iv), and of management plans adopted at national level within the framework of Community conservation measures, and where such plans provide for gradual reductions of fishing effort;
- (vi) three months, in the context of rescue and restructuring plans referred to in Article 21(f) during the period of replacement of engines;
- (vii) six months, in the event of a natural disaster, closures of fisheries decided by Member States for reasons of public health or other exceptional occurrence which is not the result of resource conservation measures.

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2. The financial contribution from the EFF to the measures referred to in points (i) to (vi) of paragraph 1 per Member State for the entire period 2007 to 2013 may not exceed the higher of the following two thresholds: EUR 1 million or 6 % of the Community financial assistance allocated to the sector in the Member State concerned.

However, these thresholds may be exceeded in accordance with the procedure referred to in Article 101(3).

3. A recurrent seasonal suspension of fishing shall not be taken into account for the grant of allowances or payments under this Regulation.

*Article 25***Investments on board fishing vessels and selectivity**

1. The EFF may contribute to the financing of equipment and the modernisation of fishing vessels of five years of age or more only under the conditions of this Article and in accordance with the provisions of Chapter III of Regulation (EC) 2371/2002.

2. Such investments may concern improvements of safety on board, working conditions, hygiene, product quality, energy efficiency and selectivity, provided that it does not increase the ability of the vessels to catch fish.

No aid shall be granted for the construction of fishing vessels nor for the increase of fishholds.

3. The EFF may contribute to one replacement of the engine per vessel, provided that:

- (a) for vessels as defined in Article 26(1) the new engine has the same power as the old one or less;
- (b) for vessels up to 24 metres in overall length other than those referred to in point (a), the new engine has at least 20 % less power than the old one;
- (c) for trawlers of more than 24 metres in overall length, the new engine has at least 20 % less power than the old one, the vessel is subject to a rescue and restructuring plan as referred to in Article 21(f) and changes to a less fuel-intensive fishing method.

4. The reduction of engine power referred to in paragraph 3(b) and (c) may be achieved by a group of vessels for each category of vessels referred to in points (b) and (c) of that paragraph.

5. The conditions for the implementation of the operations provided for in paragraph 4 may be set out in accordance with the procedure referred to in Article 101(3).

6. The EFF may contribute to the financing of equipment and modernisation works:

- (a) making it possible for catches the discarding of which is no longer authorised to be kept on board;

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- (b) as part of projects covering the preparation or trial of new technical measures for a limited period to be set by the Council or the Commission;
- (c) for reducing the impact of fishing on non-commercial species;
- (d) for reducing the impact of fishing on ecosystems and the sea bottom;
- (e) for the protection of catches and gear from wild predators, including through changes to the material of parts of fishing gear, provided that it does not increase fishing effort or undermine the selectivity of the fishing gear and that all appropriate measures are introduced to avoid physically damaging the predators.

7. The EFF may contribute to the financing of investments to achieve the selectivity of fishing gear, including up to two replacements of fishing gear over the entire period 2007 to 2013, provided that:

- (a) the fishing vessel concerned is affected by a fishing effort adjustment plan as referred to in Article 21(a)(i), is changing its fishing method and is leaving the fishery concerned to go to another fishery where the state of the resource makes fishing possible,

or

- (b) the new gear is more selective and meets recognised environmental criteria and practices which go beyond existing regulatory obligations under Community law.

8. The EFF may contribute to the funding of the first replacement of fishing gear:

- (a) for the purpose of guaranteeing compliance with new technical requirements on selectivity under Community law. Aid may be granted until the date when such requirements become mandatory or exceptionally for a short period after that date which may be fixed by the Community law concerned;
- (b) for reducing the impact of fishing on non-commercial species.

Article 26

Small-scale coastal fishing

1. For the purpose of this Article, ‘small-scale coastal fishing’ means fishing carried out by fishing vessels of an overall length of less than 12 metres and not using towed gear as listed in Table 3 in Annex I of Commission Regulation (EC) No 26/2004 of 30 December 2003 regarding the fishing vessels register of the Community ⁽¹⁾.

⁽¹⁾ OJ L 5, 9.1.2004, p. 25.

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2. Where the EFF provides financing for measures under Article 25 in favour of small-scale coastal fishing the private financial participation rate shown in Group 2 of the Table in Annex II may be reduced by 20 percentage points.
3. The EFF may contribute to the financing of socio-economic measures provided for under Article 27 in favour of small-scale coastal fishing.
4. The EFF may contribute to the payment of premiums for fishers and owners of fishing vessels involved in small-scale coastal fishing in order to:
 - (a) improve management and control of access conditions to certain fishing areas;
 - (b) promote the organisation of the production, processing and marketing chain of fisheries products;
 - (c) encourage voluntary steps to reduce fishing effort for the conservation of resources;
 - (d) encourage the use of technological innovations (more selective fishing techniques which go beyond existing regulatory obligations under Community law or innovations to protect the gear and catches from predators) that do not increase fishing effort;
 - (e) improve professional skills and safety training.

*Article 27***Socio-economic compensation for the management of the Community fishing fleet**

1. The EFF may contribute to the financing of socio-economic measures proposed by Member States for fishers affected by developments in fishing and which involve:
 - (a) the diversification of activities with a view to promoting multiple jobs for fishers;
 - (b) upgrading professional skills in particular for young fishers;
 - (c) schemes for retraining in occupations outside sea fishing;
 - (d) early departure from the fishing sector, including early retirement;
 - (e) non-renewable compensation to fishers who have worked on board a vessel for at least 12 months as fishers, provided the fishing vessel on which the beneficiaries have worked has been the object of permanent cessation of fishing activities within the meaning of Article 23. This compensation shall be refunded on a *pro rata temporis* basis where the beneficiaries return to their work as fishers within a period of less than one year after receiving it.

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2. The EFF may contribute to individual premiums to fishers younger than 40 years who can demonstrate that they have worked at least five years as fishers or have equivalent professional training and who acquire for the first time part or total ownership of a fishing vessel of less than 24 metres in overall length which is equipped to go fishing at sea and is between 5 to 30 years old.

3. The premium shall not exceed 15 % of the cost of acquisition of ownership nor exceed the amount of EUR 50 000.

4. The conditions set out in paragraphs (1)(e) and (2) may be modified in accordance with the procedure referred to in Article 101 (3).

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5. The EFF may contribute to the financing of a scheme of individual premiums for fishers who will benefit from the access regime laid down in Part 11 of Annex I to Regulation (EC) No 2371/2002 as amended by the Act of Accession of Croatia. The scheme may only apply during the period 2014 to 2015 or, if this occurs earlier, up until the date of the full implementation of the arbitration award resulting from the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, signed in Stockholm on 4 November 2009.

▼B*CHAPTER II****Priority axis 2: aquaculture, inland fishing, processing and marketing of fishery and aquaculture products****Article 28***Scope of intervention in aquaculture production**

1. Support for targeting aquaculture production may be granted for the following:

- (a) measures for productive investments in aquaculture;
- (b) aqua-environmental measures;
- (c) public health measures;
- (d) animal health measures.

2. Transfer of ownership of a business shall not be eligible for Community aid.

3. Support under paragraph 1 may contribute to lifelong learning.

4. With regard to operations provided for under Articles 29, 31 and 32 when realised for the purpose of guaranteeing compliance with standards under Community law on the environment, human or animal health, hygiene or animal welfare, aid may be granted until the date on which the standards become mandatory for the enterprises.

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5. Member States shall ensure that adequate mechanisms exist to avoid counterproductive effects, particularly the risk of creating surplus production capacity or adversely affecting the policy for conservation of fishing resources.

6. For operations provided for in Annex II of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾, aid shall be granted only when the information laid down in Annex IV of that Directive has been provided.

*Article 29***Measures for productive investments in aquaculture**

1. The EFF may support investments in the construction, extension, equipment and modernisation of production installations, in particular with a view to improving working conditions, hygiene, human or animal health and product quality, reducing negative impact or enhancing positive effects on the environment. Investments shall contribute to one or more of the following objectives:

- (a) diversification towards new species and production of species with good market prospects;
- (b) implementation of aquaculture methods substantially reducing negative impact or enhancing positive effects on the environment when compared with normal practice in the aquaculture sector;
- (c) support for traditional aquaculture activities important for preserving and developing both the economic and social fabric and the environment;
- (d) support for the purchase of equipment aiming at protecting the farms from wild predators;
- (e) improvement of the working and safety conditions of aquaculture workers.

2. Investment aid shall be limited to:

- (a) micro, small and medium-sized enterprises,

and
- (b) enterprises that are not covered by the definition in Article 3(f), with less than 750 employees or with a turnover of less than EUR 200 million.

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3. By way of derogation from paragraph 2, in the outermost regions and the outlying Greek islands as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, aid may be granted to all enterprises.

⁽¹⁾ OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

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4. Member States shall ensure that priority is given to micro and small-sized enterprises.

*Article 30***Aqua-environmental measures**

1. The EFF may support granting compensation for the use of aquaculture production methods helping to protect and improve the environment and to conserve nature.

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 of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) ⁽¹⁾;
- (c) organic aquaculture within the meaning of 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 ⁽²⁾;
- (d) sustainable aquaculture compatible with specific environmental constraints resulting from the designation of NATURA 2000 areas in accordance with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽³⁾.

3. In order to receive compensation under this Article, beneficiaries of compensation must commit themselves for a minimum of five years to aqua-environmental requirements which go beyond the mere application of normal good aquaculture practice. For the support provided for under paragraph 2(a), the environmental benefits of such commitments must be demonstrated by a prior assessment conducted by competent bodies designated by the Member State.

4. Member States shall calculate compensation on the basis of one or more of the following criteria:

- (a) the loss of revenue incurred;
- (b) the additional cost which may result from the application of aqua-environmental methods;

⁽¹⁾ OJ L 114, 24.4.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 196/2006 (OJ L 32, 4.2.2006, p. 4).

⁽²⁾ OJ L 198, 22.7.1991, p. 1. Regulation as last amended by Commission Regulation (EC) No 780/2006 (OJ L 137, 25.5.2006, p. 9).

⁽³⁾ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation of the European Parliament and of the Council (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

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- (c) the need to provide financial support for carrying out the project;
 - (d) the specific disadvantages or investment costs for units located inside or near NATURA 2000 areas.
5. A one-off compensation shall be allocated:
- (a) under paragraph 2(a), on the basis of a maximum amount per hectare of the area of the enterprise to which aqua-environmental commitments apply;
 - (b) under paragraph 2(c), for a maximum of two years during the period of the conversion of the enterprise to organic production;
 - (c) under paragraph 2(d), for a maximum of two years subsequent to the date of the decision establishing the NATURA 2000 area and only for aquaculture units existing prior to that decision.

*Article 31***Public health measures**

The EFF may contribute to compensation to mollusc farmers for the temporary suspension of harvesting of farmed mollusc. 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 reasons, suspension of the harvest:

— for more than four months 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.

The maximum duration for which compensation may be granted shall be 12 months over the entire programming period.

*Article 32***Animal health measures**

The EFF may contribute to the financing of the control and eradication of diseases in aquaculture under the terms of Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field⁽¹⁾.

*Article 33***Inland fishing**

1. For the purpose of this Article ‘inland fishing’ means fishing carried out for commercial purposes by vessels operating exclusively in inland waters or by other devices used for ice fishing.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Decision 2006/53/EC (OJ L 29, 2.2.2006, p. 37).

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2. Support for inland fishing may cover investments for the construction, extension, equipment and modernisation of inland fishing facilities, with a view to improving safety, working conditions, hygiene and product quality, human or animal health, or to reducing negative or having beneficial impact on the environment.

Investments on board vessels may be supported in accordance with the relevant provisions laid down in Article 25.

3. The EFF may support the reassignment of vessels operating in inland fishing to other activities outside fishing. National authorities shall take the appropriate measures to ensure that vessels receiving assistance from the EFF under this paragraph shall not return to operate in fishing.

4. Where measures for the recovery of species occurring in inland waters are provided for in a Community legal act, the EFF may grant support for measures for the temporary cessation of inland fishing activities for fishers and the owners of vessels operating exclusively in inland waters. Support shall be limited to a maximum total duration of 12 months over the entire programming period for the vessels concerned.

5. Transfer of ownership of a business shall not be eligible for Community aid.

6. Without prejudice to the provisions of paragraphs 3 and 4, permanent or temporary cessation of fishing activities and construction of vessels operating in inland waters shall not be eligible for assistance.

7. Investments shall not be eligible for assistance if they are likely to jeopardize the equilibrium between the fleet size and the corresponding fish resources available.

8. The management authority shall take all measures necessary in order to ensure that vessels receiving financial assistance from the EFF under this Article shall continue to operate exclusively in inland waters.

*Article 34***Investments in processing and marketing**

1. The EFF may support investments in processing and marketing of fisheries and aquaculture products.

2. Transfer of ownership of a business shall not be eligible for Community aid.

3. The EFF may also support lifelong learning.

4. Investments shall not be eligible for assistance where they concern fisheries and aquaculture products intended to be used and processed for purposes other than human consumption, with the exception of investments exclusively for the treatment, processing and marketing of fisheries and aquaculture product waste.

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5. Where operations are realised for the purpose of guaranteeing compliance with the standards under Community law on the environment, human or animal health, hygiene or animal welfare, aid may be granted until the date on which the standards become mandatory for the enterprises.

*Article 35***Eligible measures in processing and marketing**

1. The EFF may support the construction, extension, equipment and modernisation of enterprises while concentrating, in particular, on achieving one or more of the following objectives:

- (a) improving working conditions;
- (b) improving and monitoring public health and hygiene conditions or product quality;
- (c) producing high quality products for niche markets;
- (d) reducing negative impacts on the environment;
- (e) improving the use of little-used species, by-products and waste;
- (f) producing or marketing new products, applying new technologies, or developing innovative production methods;
- (g) marketing products mainly originating from local landings and aquaculture.

2. Investments shall aim overall to promote sustainable employment in the fisheries sector.

3. Investment aid shall be limited to:

- (a) micro, small and medium-sized enterprises,

and
- (b) enterprises that are not covered by the definition in Article 3(f), with less than 750 employees or with a turnover of less than EUR 200 million.

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4. By way of derogation from paragraph 3, in the outermost regions and the outlying Greek islands as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, aid may be granted to all enterprises.

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5. Member States shall ensure that priority is given to micro and small-sized enterprises.

6. Community aid shall not be granted to investments relating to the retail trade.

▼B*CHAPTER III**Priority axis 3: measures of common interest**Article 36***Scope of intervention**

1. The EFF may support measures of common interest with a broader scope than measures normally undertaken by private enterprises and which help to meet the objectives of the common fisheries policy.
2. These measures may concern:
 - (a) collective actions;
 - (b) protection and development of aquatic fauna and flora;
 - (c) fishing ports, landing sites and shelters;
 - (d) development of new markets and promotional campaigns;
 - (e) pilot projects;
 - (f) modification for reassignment of fishing vessels.

*Article 37***Collective actions**

The EFF may support measures of common interest which are implemented with the active support of operators themselves or by organisations acting on behalf of producers or other organisations recognised by the Member State and which aim, in particular, to:

- (a) contribute sustainably to better management or conservation of resources;
- (b) promote selective fishing methods or gears and reduction of by-catches;
- (c) remove lost fishing gear from the sea bed in order to combat ghost fishing;
- (d) improve working conditions and safety;
- (e) contribute to the transparency of markets in fisheries and aquaculture products including traceability;
- (f) improve quality and food safety;
- (g) develop, restructure or improve aquaculture sites;
- (h) investments concerning production, processing or marketing equipment and infrastructure including for waste treatment;
- (i) upgrade professional skills, or develop new training methods and tools;

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- (j) promote partnership between scientists and operators in the fisheries sector;
- (k) networking and exchange of experience and best practice among organisations promoting equal opportunities between men and women and other stakeholders;
- (l) contribute to the objectives laid down for small-scale coastal fishing in Article 26(4);
- (m) improve management and control of access conditions to fishing areas, in particular through the drawing up of local management plans approved by the competent national authorities;
- (n) create producer organisations recognised under Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽¹⁾, their restructuring and the implementation of their plans to improve quality;
- (o) carry out feasibility studies relating to promotion of partnerships with third countries in the fisheries sector.

Aid referred to in point (n) shall be granted for a maximum of three years following the date of recognition or following the date of the decision on restructuring of the producer organisation and shall be degressive over these three years.

*Article 38***Measures intended to protect and develop aquatic fauna and flora**

1. The EFF may support measures of common interest intended to protect and develop aquatic fauna and flora while enhancing the aquatic environment.

2. These measures shall relate to:

- (a) the construction or installation of static or movable facilities intended to protect and develop aquatic fauna and flora,

or

- (b) the rehabilitation of inland waters, including spawning grounds and migration routes for migratory species,

or

- (c) the protection and enhancement of the environment in the framework of NATURA 2000 where its areas directly concern fishing activities, excluding operational costs.

Direct restocking shall not be eligible for aid, unless explicitly foreseen as a conservation measure by a Community legal act.

⁽¹⁾ OJ L 17, 21.1.2000, p. 22. Regulation as last amended by the 2003 Act of Accession.

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3. The action must be implemented by public or semi-public bodies, recognised trade organisations or other bodies appointed for that purpose by the Member State.

*Article 39***Fishing ports, landing sites and shelters**

1. The EFF may support investments in existing public or private fishing ports, which are of interest to fishers and aquaculture producers using them, with the aim of improving the services offered.

The EFF may also support investments to restructure landing sites and to improve the conditions for fish landed by coastal fishers in existing fish landing sites designated by the competent national authorities.

2. The investments shall relate, in particular, to:

- (a) improving the conditions under which fisheries and aquaculture products are landed, processed, stored in the ports and auctioned;
- (b) the provision of fuel, ice, water and electricity;
- (c) repair equipment and the maintenance of fishing vessels;
- (d) construction, modernisation and extension of quays improving safety during landing or loading;
- (e) computerised management of fishing activities;
- (f) improving safety and working conditions;
- (g) the storage and treatment of waste;
- (h) measures to reduce discards.

3. In order to improve the safety of fishers, the EFF may also support safety related investments for the construction or modernisation of small fishing shelters.

*Article 40***Development of new markets and promotional campaigns**

1. The EFF may support measures of common interest intended to implement a policy of quality and value enhancement, development of new markets or promotional campaigns for fisheries and aquaculture products.

2. The operations may not be aimed at commercial brands or make reference to specific countries or geographical areas, except in case of products recognised under the terms of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and food-stuffs ⁽¹⁾.

3. The measures shall, in particular, relate to:

- (a) conducting regional, national or transnational promotion campaigns for fisheries and aquaculture products;

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

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- (b) the supply to the market of surplus or underexploited species which are normally discarded or of no commercial interest;
- (c) implementation of a quality policy for fisheries and aquaculture products;
- (d) promotion of products obtained using methods with low impact on the environment;
- (e) promotion of products recognised under the terms of Regulation (EC) No 510/2006;
- (f) quality certification, including label creation and the certification of products caught or farmed using environmentally friendly production methods;
- (g) campaigns to improve the image of fisheries and aquaculture products and the image of the fisheries sector;
- (h) implementation of market surveys.

*Article 41***Pilot projects**

1. The EFF may support pilot projects, including the experimental use of more selective fishing techniques, 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 Member State, in partnership with a scientific or technical body.

2. The pilot projects provided for in the paragraph 1 may:

- (a) test, under near-actual conditions in the production sector, the technical or economic viability of an innovative technology with the aim of acquiring and disseminating technical or economic 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;
- (c) develop and test methods to improve gear selectivity, reduce by-catches, discards or the impact on the environment, in particular on the sea bottom;
- (d) test alternative types of fishing management techniques.

A pilot project shall always include adequate scientific follow-up in order to yield significant results.

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3. The results of pilot projects financed under paragraph 1 shall be the subject of technical reports available to the public.

*Article 42***Modification for reassignment of fishing vessels**

The EFF may support the modification of fishing vessels for their reassignment, under the flag of a Member State and registered in the Community for training or research purposes in the fisheries sector or for other activities outside fishing. These operations shall be limited to public or semi-public bodies.

*CHAPTER IV****Priority axis 4: sustainable development of fisheries areas****Article 43***Scope of assistance**

1. The EFF may provide assistance, complementary to the other Community instruments, for the sustainable development and improvement of the quality of life in fisheries 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 effects.

2. The measures for sustainable development of fisheries areas shall seek to:

- (a) maintain the economic and social prosperity of these areas and add value to fisheries and aquaculture products;
- (b) maintain and develop jobs in fisheries areas through support for diversification or the economic and social restructuring of areas facing socio-economic difficulties as a result of changes in the fisheries sector;
- (c) promote the quality of the coastal environment;
- (d) promote national and transnational cooperation between fisheries areas.

3. A fisheries area selected for assistance shall be limited in size and, as a general rule, shall be smaller than NUTS level 3 of the common classification of territorial units for statistics within the meaning of Regulation (EC) No 1059/2003 of 26 May 2003 of the European Parliament and of the Council of 23 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)⁽¹⁾. The area should be sufficiently coherent from a geographical, economic and social point of view.

⁽¹⁾ OJ L 154, 21.6.2003, p. 1. Regulation as amended by Regulation (EC) No 1888/2005 (OJ L 309, 25.11.2005, p. 1).

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4. Assistance should target, as a priority, areas with:

(a) low population density,

or

(b) fishing in decline,

or

(c) small fisheries communities.

5. The Member State shall inform the Commission of the areas selected for funding under this priority axis and include this information in the forthcoming annual report on implementation referred to in Article 67.

*Article 44***Eligible measures**

1. Support for sustainable development of fisheries areas may be granted for:

(a) strengthening the competitiveness of fisheries areas;

(b) restructuring and redirecting economic activities, in particular by promoting eco-tourism, provided that these activities do not result in an increase in fishing effort;

(c) diversifying activities through the promotion of multiple employment for fishers through the creation of additional jobs outside the fisheries sector;

(d) adding value to fisheries products;

(e) supporting small fisheries and tourism related infrastructure and services for the benefit of small fisheries communities;

(f) protecting the environment in fisheries areas to maintain its attractiveness, regenerating and developing coastal hamlets and villages with fisheries activities and protecting and enhancing the natural and architectural heritage;

(g) re-establishing the production potential in the fisheries sector when damaged by natural or industrial disasters;

(h) promoting inter-regional and trans-national cooperation among groups in fisheries areas, mainly through networking and disseminating best practice;

(i) acquiring skills and facilitating the preparation and implementation of the local development strategy;

(j) contributing to the running costs of the groups.

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2. The EFF may also finance up to a maximum of 15 % of the priority axis involved, measures such as the promotion and improvement of professional skills, worker adaptability and access to employment, particularly in favour of women, provided that these measures are an integral part of a sustainable development strategy and that they have a direct link with the measures described in paragraph 1.
3. Support granted under paragraph 1 may include measures provided for in Chapters I, II and III with the exception of measures provided for in Articles 23 and 24. When support is granted for operations corresponding to these measures, the relevant conditions and the scales of contribution per operation laid down respectively in Chapters I, II and III and Annex II shall apply.
4. Beneficiaries of support provided for in points (b) and (c) of paragraph 1 and in paragraph 2 should be either workers in the fisheries sector or persons with a job linked to the sector.
5. Running costs for groups may not exceed, as a general rule, 10 % of the total budget allocated to a fisheries area. By way of derogation, Member States may decide to exceed this threshold on a case by case basis, in particular when the groups cannot be established on the basis of existing experienced organisations.
6. If a measure under this Article is also eligible under another Community support instrument, the Member State shall make clear in drawing up its operational programme whether it is supported by the EFF or by another Community support instrument.

*Article 45***Participation in the sustainable development of fisheries areas**

1. Measures to support sustainable development of fisheries areas shall be implemented on a given territory by local entities or groups (the group) representing public and private partners from the various local relevant socio economic sectors and, according to the principle of proportionality, with adequate administrative and financial capacity to administer the assistance and ensure that the operations are completed successfully. The group should, whenever possible, be based on existing experienced organisations.
2. The group shall propose and implement an integrated local development strategy based on a bottom-up approach in agreement with the managing authority.
3. The territory covered by one group should be coherent and have sufficient critical mass in terms of human, financial and economic resources to support a viable local development strategy.
4. The operations under the local development strategy shall be chosen by the group and shall correspond to the measures provided for in Article 44. The majority of the operations shall be led by the private sector.

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5. Member States or regions, depending on the specific nature of their institutional structure, may encourage networking aiming at disseminating information and, in particular, exchanging best practice.

*CHAPTER V**Priority axis 5: technical assistance**Article 46***Technical assistance**

1. At the initiative of and/or on behalf of the Commission, subject to a ceiling of 0,8 % of its annual allocation, the EFF may finance the preparatory, monitoring, administrative and technical support, evaluation and audit measures necessary for implementing this Regulation.

These measures are executed in accordance with Article 53(2) of Regulation (EC, Euratom) No 1605/2002 and any other relevant provisions of that Regulation and of its implementing rules applicable to this form of execution of the general budget of the European Union.

Those measures shall include:

- (a) evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the EFF;
- (b) measures aimed at the partners, the beneficiaries of assistance from the EFF and the general public, including information measures;
- (c) measures to disseminate information, networking, raise awareness, promote cooperation and exchange experiences throughout the Community;
- (d) the installation, operation and interconnection of computerised systems for management, monitoring, inspection and evaluation;
- (e) improvements in evaluation methods and the exchange of information on practices in this field;
- (f) the establishment of trans-national and Community networks of actors in the sustainable development of fisheries areas 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 State, the EFF may finance under the operational programme actions relating to the preparation, management, monitoring, evaluation, publicity, control and audit of the operational programme, as well as networking, up to a limit of 5 % of its total amount. By exception, and in duly justified circumstances, this threshold may be exceeded.

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3. At the initiative of the Member State, the EFF may also finance actions under the operational programme relating to the improvement of administrative capacities of the Member State all of whose regions are eligible under the Convergence objective.

4. Types of technical assistance provided for in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 101(2).

TITLE V

EFFECTIVENESS AND PUBLICITY OF ASSISTANCE

CHAPTER I

*Evaluation of the operational programmes**Article 47***General provisions**

1. The operational programme shall be subject to *ex ante*, interim and *ex post* evaluations in accordance with the provisions of Articles 48, 49 and 50.

Evaluations shall aim to improve the quality and effectiveness of the assistance from the EFF and the implementation of the operational programme. They shall also appraise their impact with respect to the guiding principles set out in Article 19, the relevant part of 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 assistance from the EFF shall be appraised on the basis of the following criteria:

(a) the overall impact of the EFF on the objectives set out in Article 4;

(b) the impact of the priority axes incorporated in the operational programme.

3. Evaluations provided for in the first subparagraph of paragraph 1 shall be carried out under the responsibility of the Member State or the Commission, as appropriate, in accordance with the principle of proportionality and in partnership with 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 evaluation methods and standards to be applied shall be established in accordance with the procedure referred to in Article 101(3).

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6. Evaluations shall be carried out by assessors independent of the authorities referred to in Article 58. 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 of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.

7. Evaluations shall be financed from the budget for technical assistance of the operational programme 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 48***Ex ante evaluation**

1. The *ex ante* evaluation shall aim to ensure the coherence between the guiding principles set out in Article 19, the relevant part of the national strategic plan and the operational programme as well as to optimise the allocation of budgetary resources under the operational programme and to improve programming quality.

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 in accordance with the procedure provided for in Article 47(5).

3. Member States shall present the *ex ante* evaluation at the latest when submitting the operational programme.

*Article 49***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 a calendar which makes it possible to take account of the findings in order to establish the strategic debate referred to in Article 16.

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 in accordance with the procedure provided for in Article 47(5). Interim evaluations are forwarded to the Monitoring Committee of the operational programme and to the Commission.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

*Article 50****Ex post evaluation***

1. *Ex post* evaluation shall examine the degree of utilisation of resources, the effectiveness and efficiency of the operational programme and its impact in relation to the objectives set out in Article 4 and the guiding principles set out in Article 19. It shall identify the factors which contributed to the success or failure of the implementation of the operational programme, including from the point of view of sustainability, and best practice.

2. The *ex post* evaluation shall be performed at 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 not later than 31 December 2015.

*CHAPTER II****Information and publicity****Article 51***Information and publicity**

1. The Member States shall provide information on and publicise the operational programme and operations and the Community contribution. The information shall be addressed to the general public. It shall aim to highlight the role of the Community and ensure the transparency of assistance from the EFF.

2. The managing authority for the operational programme shall be responsible for its publicity as follows:

- (a) it shall inform potential beneficiaries, organisations involved in the fisheries sector, professional organisations, economic and social partners, bodies involved in promoting gender equality and non-governmental organisations concerned, including environmental organisations, of the possibilities offered by the programme and the rules and methods governing access to financing;
- (b) it shall inform the beneficiaries of the amount of the Community contribution;
- (c) it shall inform the general public about the role played by the Community in the operational programme and the results thereof.

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3. The Member States shall notify the Commission each year of the initiatives undertaken for the purpose of this Article in the framework of the annual and final reports on implementation referred to in Article 67.

TITLE VI

FINANCIAL CONTRIBUTION FROM THE EFF

CHAPTER I

*Contribution from the EFF**Article 52***Public aid intensity**

The maximum intensity of public aid is set out in the Table in Annex II.

*Article 53***Contribution from the EFF**

1. The Commission's decision adopting an operational programme shall fix the maximum rate and the maximum amount of the contribution from the EFF separately for the Convergence and the Non-Convergence objective for each priority axis.

2. The contribution from the EFF shall be calculated in relation to the total public expenditure.

3. The contribution from the EFF shall be established per priority axis. The contribution from the EFF shall be subject to the following ceilings:

- (a) 75 % of the total public expenditure co-financed by the EFF in regions eligible under the Convergence objective, subject to paragraphs 7, 8 and 9.
- (b) 50 % of the total public expenditure co-financed in regions not eligible under the Convergence objective, subject to paragraphs 7, 8 and 9.

Notwithstanding this, Member States may apply in the operational programme a uniform rate by region at the level of measures.

4. The minimum contribution from the EFF per priority axis shall be 20 % of the total public expenditure.

5. The minimum amount of support granted to an operation by the EFF shall be 5 % of the total public expenditure allocated for assistance to the operation.

6. The overall amount of support granted to an operation by the EFF shall not exceed 95 % of the total public expenditure allocated for assistance to the operation.

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7. When operations financed by the EFF fall under Articles 24 or 27, where these form part of a fishing effort adjustment plan referred to in Article 21(a)(i), or fall under Articles 26(3) or (4), the ceiling for the EFF contribution for priority axis 1 shall be increased by up to 10 percentage points in the regions eligible under the Convergence objective and by up to 15 percentage points for the regions not eligible under the Convergence objective.

This increase is proportional to the ratio of the total expenditure for the operations in the first sub-paragraph to the total expenditure for priority axis 1.

8. When operations financed by the EFF fall under Article 23, the ceiling for the EFF contribution for priority axis 1 shall be increased by up to 10 percentage points in the regions eligible under the Convergence objective and by up to 25 percentage points for the regions not eligible under the Convergence objective.

This increase is proportional to the ratio of the total expenditure for the operations in the first sub-paragraph to the total expenditure for priority axis 1.

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9. When operations are financed by the EFF in the outlying Greek islands which are under a handicap due to their distant location and in the outermost regions as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, the ceiling for the contribution from the EFF for each priority axis shall be increased by up to 10 percentage points in the regions eligible under the Convergence objective and by up to 35 percentage points for the regions not eligible under the Convergence objective.

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For each priority axis, this increase is proportional to the ratio of the total expenditure for the operations in the first sub-paragraph to the total expenditure within the priority axis.

10. Technical assistance measures implemented at the initiative of the Commission or on its behalf shall be financed by the EFF at 100 %.

*Article 54***Non-Accumulation**

Expenditure co-financed by the EFF shall not receive assistance from another Community financial instrument.

*Article 55***Eligibility of expenditure**

1. Expenditure shall be eligible for a contribution from the EFF if it has actually been paid by the beneficiaries between the date of submission of the operational programme to the Commission or from 1 January 2007, whichever is earlier, and 31 December 2015. Operations co-financed must not have been completed before the starting date for eligibility.

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

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

3. Expenditure shall be eligible for a contribution from the EFF only where incurred for operations decided on by the managing authority in accordance with criteria fixed in advance by the Monitoring Committee.

New expenditure, added at the moment of the revision of an operational programme referred to in Article 18, shall be eligible from the date of the submission to the Commission of the request for revision of the operational programme.

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

5. The following expenditure shall not be eligible for a contribution from the EFF:

- (a) a value added tax, except for a non recoverable value added tax when it is genuinely and definitively borne by a beneficiary other than non-taxable persons referred to in the first subparagraph of Article 4(5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾;
- (b) interest on debt, without prejudice to paragraph 8;
- (c) the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned;
- (d) housing.

6. Paragraphs 1, 3 and 4 shall be without prejudice to the provisions of Article 46(1).

7. As regards operations not implying expenditure for the beneficiary, the expenditure eligible for a contribution from the EFF shall be the public aid paid to the beneficiary.

8. Notwithstanding paragraph 5(b), the contribution from the EFF may be in a form other than a non-repayable direct assistance. Detailed rules shall be defined in accordance with the procedure referred to in Article 101(3).

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51 22.2.2006, p. 12).

▼B*Article 56***Durability of operations**

1. The Member State or managing authority shall ensure that an operation retains the contribution from the EFF only if that operation does not, within five 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;

or

(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 in the annual and final report on implementation referred to in Article 67 of any such modification referred to in paragraph 1.

3. Sums unduly paid shall be recovered in accordance with Title VIII, Chapters II and III.

4. The Member States and the Commission shall ensure that undertakings which are or have been subject to a procedure of recovery in accordance with paragraph 3 following the transfer of a productive activity within a Member State or to another Member State do not benefit from a contribution from the EFF.

TITLE VII

MANAGEMENT, MONITORING AND CONTROL

CHAPTER I

*Management and control systems**Article 57***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) the definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;

(b) compliance with the principle of separation of functions between and within such bodies;

(c) procedures for ensuring the correctness and regularity of expenditure declared under the operational programme;

(d) reliable accounting, monitoring and financial reporting systems in computerised form;

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- (e) a system of reporting and monitoring where the responsible body entrusts the execution of tasks to another body;
 - (f) arrangements for auditing the functioning of the systems;
 - (g) systems and procedures to ensure an adequate audit trail;
 - (h) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.
2. The measures laid down in points (e) and (f) shall be proportionate to the total amount of public expenditure allocated to the operational programme concerned.

*Article 58***Designation of authorities**

1. For the operational programme the Member State shall designate the following:
- (a) a managing authority to manage the operational programme;
 - (b) a certifying authority to certify statements of expenditure and applications for payment before they are sent to the Commission;
 - (c) an audit authority, functionally independent of the managing authority and the certifying authority, responsible for verifying the effective functioning of the management and control system.
2. The Member State may designate one or more intermediate bodies to carry out some or all of the tasks of the managing or certifying authority under the responsibility of that authority.
3. The Member State shall lay down rules governing its relations with the authorities referred to in paragraph 1 and their relations with the Commission.
4. Subject to Article 57(1)(b), some or all of the authorities referred to in paragraph 1 may be part of the same body.

*Article 59***Functions of the managing authority**

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

- (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules, for the whole of their implementation period;

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- (b) verifying that the co-financed products and services are delivered and that the expenditure declared by the beneficiaries has actually been incurred and complies with Community and national rules; verifications on-the-spot of individual operations may be carried out on a sample basis in accordance with the detailed rules to be adopted by the Commission in accordance with the procedure referred to in Article 101(3);
- (c) ensuring that there is a system for recording and storing in computerised form accounting records of each operation under the operational programme and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation is collected;
- (d) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation without prejudice to national accounting rules;
- (e) ensuring that the evaluations of operational programmes referred to in Articles 48 and 49 are carried out in accordance with Article 47;
- (f) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of Article 87;
- (g) ensuring that the certifying authority and the audit authority receive all necessary information on the procedures and verifications carried out in relation to expenditure for the purpose of certification and audit respectively;
- (h) guiding the work of the monitoring committee and providing it with the documents required to permit the quality of the implementation of the operational programme to be monitored in the light of its specific goals;
- (i) drawing up and, after approval by the monitoring committee, submitting to the Commission the annual and final reports on implementation;
- (j) ensuring compliance with the information and publicity requirements laid down in Article 51.

*Article 60***Functions of the certifying authority**

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

- (a) drawing up and submitting to the Commission certified statements of expenditure and applications for payment;
- (b) certifying that:
 - (i) the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,

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- (ii) the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with the applicable Community and national rules;
- (c) satisfying itself that the information received on the procedures and verifications carried out in relation to expenditure included in statements of expenditure provide an adequate basis for certification;
- (d) taking account for the certification purposes of the results of all audits carried out by or under the responsibility of the audit authority;
- (e) maintaining accounting records in computerised form of expenditure declared to the Commission;
- (f) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered prior to the closure of the operational programme that are due to be repaid to the general budget of the European Union following financial corrections made in accordance with Article 97 shall be deducted from the next statement of expenditure.

*Article 61***Functions of the audit authority**

1. The audit authority of an operational programme shall be responsible in particular for:

- (a) ensuring that audits are carried out to verify the effective functioning of the management and control system of the operational programme;
- (b) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;
- (c) presenting the Commission, within nine months of the approval of the operational programme, an audit strategy covering the bodies which will perform the audits pursuant to points (a) and (b), the method to be used, the sampling method for audits on operations, and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period;
- (d) ensuring that the managing authority and the certifying authority receive all necessary information on the audits and controls carried out;

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- (e) by 31 December each year from 2008 up to 2015:
- (i) submitting to the Commission an annual control report setting out the findings of the audits carried out during the previous 12 month period ending on 30 June of the year concerned in accordance with the audit strategy of the operational programme and reporting any shortcomings found in the systems for the management and control of the programme. The first report to be submitted by 31 December 2008 shall cover the period from 1 January 2007 to 30 June 2008. The information concerning the audits carried out in the period after 1 July 2015 shall be included in the final control report supporting the closure declaration referred to in point (f);
 - (ii) issuing an opinion based on the controls and audits that have been carried out under its responsibility as to whether the management and control system functions effectively, so as to provide reasonable assurance that statements of expenditure presented to the Commission are correct and, as a consequence, reasonable assurance that the underlying transactions are legal and regular;
 - (iii) submitting, where applicable under Article 85, a declaration for partial closure assessing the legality and the regularity of the expenditure concerned;
- (f) submitting to the Commission at the latest by 31 March 2017, a closure declaration assessing the validity of the application for payment of the balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.
2. The audit authority shall ensure that the audit work takes account of internationally accepted audit standards.
3. Where the audits and controls referred to in paragraph 1 (a) and (b) are carried out by a body other than the audit authority, the audit authority shall ensure that such body has the necessary functional independence.
4. The Commission shall provide its comments on the audit strategy presented under paragraph 1(c) no later than three months following its receipt. In the absence of comments within this period it shall be considered to be accepted.

*CHAPTER II****Monitoring****Article 62***Principles of monitoring**

1. Monitoring shall consist of the examination of the correct implementation of the operational programme.
2. Monitoring shall be carried out in the first instance by the monitoring committee and the managing authority.

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3. The Commission shall participate in the monitoring through its participation in the monitoring committee and the annual review of the operational programme which shall include, in particular, the analysis of the annual implementation and control reports.

4. Data exchange between the Commission and the Member States for this purpose shall be carried out electronically in accordance with the implementing rules referred to in Article 102.

*Article 63***Monitoring committee**

The Member State shall set up a monitoring committee for the operational programme, in agreement with the managing authority after consultation with the partners pursuant to Article 8. The monitoring committee shall be set up within three months from the date of the notification to the Member State of the decision approving the operational programme.

The monitoring committee shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the managing authority in order to exercise its missions in accordance with this Regulation.

*Article 64***Composition**

1. The monitoring committee shall be chaired by a representative of the Member State or the managing authority.

Its composition shall be decided by the Member State in conformity with Article 8(1) and in agreement with the managing authority.

2. At its own initiative, a representative of the Commission shall participate in the work of the monitoring committee in an advisory capacity.

*Article 65***Tasks**

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

- (a) it shall consider and approve the criteria for selecting the operations financed within six months of the approval of the operational programme and approve any revision of those criteria in accordance with programming needs;
- (b) it shall periodically review progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the managing authority;
- (c) it shall examine the results of implementation, particularly achievement of the targets set for each priority axis and the interim evaluations referred to in Article 49;

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- (d) it shall examine and approve the annual and final reports on implementation referred to in Article 67 before they are sent to the Commission;
- (e) it shall be informed of the annual control report and of any relevant comments the Commission may make after examining that report;
- (f) at the initiative of the Member State, it may be informed of the written information submitted to the Commission referred to in Article 16(1);
- (g) it may propose to the managing authority any revision or examination of the operational programme likely to make possible the attainment of the EFF's objectives set out in Article 4 or to improve its management, including its financial management;
- (h) it shall consider and approve any proposal to amend the content of the Commission decision on the contribution from the EFF.

*Article 66***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 the indicators referred to in Article 20(1)(c) specified 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 beneficiary's undertakings.
4. Data exchange between the Commission and the Member States for this purpose shall be carried out electronically, in accordance with the implementing rules referred to in Article 102.

*Article 67***Annual reports and final reports on implementation**

1. By 30 June each year, and for the first time in 2008, the managing authority shall send the Commission an annual report, and by 31 March 2017 a final report, on the implementation of the operational programme.
2. In order to obtain a clear view of the implementation of the operational programme, the reports referred to in paragraph 1 shall include the following information:
 - (a) the progress made in implementing the operational programme and priority axes in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification, using the indicators referred to in Article 20(1)(c) at the level of the priority axis;

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- (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 EFF and from other financial instruments;
- (c) the financial implementation of the operational programme, detailing separately for the Convergence objective and the Non-Convergence objective for each priority axis:
 - (i) the expenditure paid out by the beneficiaries included in the applications for payment sent to the managing authority and the corresponding public contribution;
 - (ii) the total payments received from the Commission and quantification of the financial indicators referred to in Article 66(2),

and
 - (iii) the expenditure paid out by the body responsible for making payments to the beneficiaries;
- (d) the steps taken by the managing authority and the monitoring committee to ensure the quality and effectiveness of implementation, in particular:
 - (i) monitoring and evaluation measures, including data collection arrangements;
 - (ii) a summary of any significant problems encountered in implementing the operational programme and any measures taken, including the response to comments made under Article 69(2);
 - (iii) the use made of technical assistance;
- (e) the measures taken to ensure information and publicity for the operational programme;
- (f) the use made of assistance released following cancellation as referred to in Article 96(2) to the managing authority or to another public authority during the period of implementation of the operational programme.
- (g) cases where a substantial modification has been detected under Article 56.
- (h) significant problems relating to compliance with Community law which have been encountered in the implementation of the operational programme and the measures taken to deal with them.

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

Information referred to in points (b), (d), (e), (f) and (g) shall not be included if there has been no significant modification since the previous report.

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3. The reports referred to in paragraph 1 shall be judged acceptable if they contain all the information listed in paragraph 2. The Commission shall inform the Member State on the acceptability of those reports within 15 working days.

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 implementation, 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 68***Annual report by the Commission**

1. By 31 December each year, and for the first time in 2008, the Commission shall forward to the European Parliament, to the Council, to the European Economic and Social Committee and to the Committee of the Regions a report on the actual implementation of this Regulation during the preceding year.

2. This report shall summarise the main developments, trends and challenges relating to the implementation of the operational programmes.

3. The annual report by the Commission shall also include:

- (a) a summary of the activities of the EFF 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 EFF with the Structural Funds and the EAFRD;
- (c) as soon as they become available, the findings of the evaluations provided for in Article 49;
- (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 EFF assistance carried out by the Member State and, where appropriate, the financial corrections made.

4. The report shall be based on an examination and assessment by the Commission of the Member States' annual report and of any other available information. In particular in 2012, this report shall in addition be based on the outcome of the strategic debate referred to in Article 16(1) 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.



Article 69

Annual examination of the operational programmes

1. Every year when the annual report on implementation referred to in Article 67 is submitted and taking account of the opinion of the Commission, the Commission and the managing authority shall examine the progress made in implementing the operational programme, the principal results achieved over the previous year, the financial implementation and other factors with a view to improving implementation.

Any aspects of the operation of the management and control system raised in the annual control report, referred to in Article 61(1)(e)(i), may also be examined and, where appropriate, this examination shall be carried out with the participation of the audit authority.

2. After the examination referred to in paragraph 1 and, where appropriate, with the participation of the audit authority, the Commission may make comments to the Member State and the managing authority, which shall inform the monitoring committee thereof. The Member State shall inform the Commission of the action taken in response to those comments.

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

CHAPTER III

Responsibilities of Member States and of the Commission

Section 1

Responsibilities of Member States

Article 70

Management and control

1. Member States shall be responsible for ensuring the management and control of operational programmes, in particular through the following measures:

- (a) ensuring that the management and control systems for the operational programme are set up in accordance with Articles 57 to 61 and function effectively;
- (b) preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. They shall notify these to the Commission and keep the Commission informed of the progress of administrative and legal proceedings.

2. When amounts unduly paid to a beneficiary cannot be recovered, the Member State shall be responsible for reimbursing the amounts lost to the general budget of the European Union when it is established that the loss has been incurred as a result of fault or negligence on its part.



Article 71

Setting up of management and control systems

1. Before the submission of the first application for interim payment or at the latest within 12 months after the approval of the operational programme, the Member States shall submit to the Commission a description of the systems, covering in particular the organisation and procedures of:

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

2. The description referred to in paragraph 1 shall be accompanied by a report setting out the results of an assessment of the setting up of the systems and giving an opinion on their compliance with Articles 57 to 61. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings. The Member State shall inform the Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations.

The report referred to in the first subparagraph shall be deemed to be accepted, and the first interim payment shall be made, in the following circumstances:

- (a) within three months of the date of receipt of the report when the opinion referred to in the first subparagraph is without reservations and in the absence of observations by the Commission;
- (b) if the opinion contains reservations, upon confirmation to the Commission that corrective measures concerning key elements of the systems have been implemented, and the corresponding reservations withdrawn, and in the absence of observations by the Commission within three months of the date of confirmation.

Where the reservations concern only a single priority axis, the first interim payment shall be made as regards the other priority axes of the operational programme for which there is no reservation.

3. The report and the opinion referred to in paragraph 2 shall be drawn up by the audit authority or by a public or private body functionally independent of the managing and certifying authorities, which shall carry out its work taking account of internationally accepted audit standards.

Section 2

Responsibilities of the Commission

Article 72

Responsibilities of the Commission

1. The Commission shall satisfy itself in accordance with the procedure laid down in Article 71 that the Member States have set up management and control systems that comply with Articles 57 to 61 and on the basis of the annual control reports and the annual opinion of the audit authority and its own audits, that the systems function effectively during the period of implementation of the operational programmes.

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2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits to verify the effective functioning of the management and control systems, which may include audits on operations included in the operational programme, with a minimum of 10 working days' notice, except in urgent cases. Officials or authorised representatives of the Member State may take part in such audits.

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits, shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EFF.

The aforementioned powers of audit shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Authorised Commission representatives shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of the national legislation of the Member State concerned. However, they shall have access to information thus obtained.

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

*Article 73***Cooperation with the audit authorities of the Member States**

1. The Commission shall cooperate with the audit authority of the operational programme to coordinate their respective audit plans and audit methods and shall immediately exchange the results of audits carried out on management and control systems in order to make the best possible use of resources and to avoid unjustified duplication of work.

The Commission and the audit authority shall meet on a regular basis and at least once a year, unless otherwise agreed between them, in order to examine together the annual control report and opinion presented under Article 61 and to exchange views on other issues relating to the improvement of the management and control of the operational programme.

2. In determining its own audit strategy, the Commission shall identify those operational programmes for which the opinion on the compliance of the system under Article 71(2) is without reservations, or where reservations have been withdrawn following corrective measures, where the audit strategy of the audit authority is satisfactory and where reasonable assurance has been obtained that the management and control systems function effectively on the basis of the results of audits carried out by the Commission and the Member State.

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3. For those operational programmes, the Commission may conclude that it can rely principally on the opinion referred to in Article 61(1)(e)(ii) with regard to the effective functioning of the systems and that it will carry out on-the-spot audits only if there is evidence to suggest shortcomings in the system affecting expenditure certified to the Commission in a year for which the opinion under Article 61(1)(e)(ii), which contain no reservations in respect of such shortcomings, has been provided.

Where the Commission reaches such a conclusion, it shall inform the Member State concerned accordingly. Where there is evidence to suggest shortcomings, it may require the Member State to carry out audits in accordance with Article 72(3) or it may carry out its own audits under Article 72(2).

TITLE VIII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Section 1

Budget commitments*Article 74***Budget commitments**

The Community budget commitments in respect of the operational programmes (hereinafter referred to as budget commitments) shall be effected annually and separately for the Convergence and Non-Convergence objectives 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, as a general rule by 30 April each year, on the basis of the decision to grant a contribution from the EFF referred to in Article 17.

Section 2

Payments*Article 75***Common rules for payments**

1. Payments by the Commission of the contribution from the EFF shall be made in accordance with the budget appropriations. Each payment shall be posted to the earliest open budget commitment.

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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 30 April each year, Member States shall send the Commission a provisional forecast of their likely applications for payment for the current financial year and the subsequent financial year.
4. All exchanges concerning financial transactions between the Commission and the authorities and bodies designated by the Member States shall be made by electronic means, in accordance with the implementing rules referred to in Article 102. In cases of *force majeure*, and in particular of malfunction of the common computerised system or a lack of a lasting connection, the Member State may forward the statement of expenditure and the application for payment in hard copy.

▼M1*Article 76***Rules for calculating interim payments**

1. Interim payments shall be calculated by applying — to the public contribution declared in the statement of expenditure certified by the certifying authority under each priority axis and under each convergence/non-convergence objective — the co-financing rate established under the current financing plan for that priority axis and that objective.
2. By way of derogation from paragraph 1, in response to a specific and properly grounded request by the Member State, an interim payment shall be calculated as the amount of Union assistance paid or due to be paid to the beneficiaries in respect of the priority axis and of the objective. This amount must be specified by the Member State in the statement of expenditure.
3. By way of derogation from Article 53(3), at the request of a Member State, interim payments shall be increased by an amount corresponding to 10 percentage points above the co-financing rate applicable to each priority axis, up to a maximum of 100 %, to be applied to the amount of eligible public expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State fulfils one of the following conditions:
 - (a) financial assistance is made available to it under Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism⁽¹⁾, or is made available to it by other euro area Member States before the entry into force of that Regulation;
 - (b) medium-term financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments⁽²⁾;

⁽¹⁾ OJ L 118, 12.5.2010, p. 1.

⁽²⁾ OJ L 53, 23.2.2002, p. 1.

▼ M1

(c) financial assistance is made available to it in accordance with the Treaty establishing the European Stability Mechanism signed on 2 February 2012.

4. For the purpose of calculating interim payments after the Member State ceases to benefit from the Union financial assistance referred to in paragraph 3, the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

However, those amounts shall be taken into account for the purpose of Article 79(1).

5. The increased interim payments resulting from the application of paragraph 3 shall be made available within the shortest period of time to the managing authority and shall only be used for making payments in connection with the implementation of the operational programme.

6. In the context of the annual reporting in accordance with Article 67(1), the Member States shall provide the Commission with appropriate information on the use of the derogation referred to in paragraph 3 of this Article, showing how the increase in the amounts of support has contributed to the promotion of competitiveness, growth and jobs in the Member State concerned. This information shall be taken into account by the Commission in the preparation of the annual reporting provided for by Article 68(1).

*Article 77***Rules for calculating payments of the balance**

1. Payments of the balance shall be limited to whichever of the following two amounts is smaller:

- (a) the amount calculated by applying to the public contribution declared in the final statement of expenditure, certified by the certifying authority under each priority axis and under each convergence/non-convergence objective, the co-financing rate established under the current financing plan for that priority axis and that objective;
- (b) the amount of Union assistance paid or due to be paid to the beneficiaries in respect of each priority axis and for each objective. This amount must be specified by the Member State in the final statement of expenditure certified by the certifying authority in respect of each priority axis and for each objective.

2. By way of derogation from Article 53(3), at the request of a Member State, payments of the final balance shall be increased by an amount corresponding to 10 percentage points above the co-financing rate applicable to each priority axis, up to a maximum of 100 %, to be applied to the amount of eligible public expenditure newly declared in each certified statement of expenditure submitted during the period in which a Member State fulfils one of the conditions laid down in points (a), (b) and (c) of Article 76(3).

▼ **M1**

3. For the purpose of calculating the payment of the final balance after the Member State ceases to benefit from the Union financial assistance referred to in Article 76(3), the Commission shall not take into account the increased amounts paid in accordance with that paragraph.

*Article 77a***Limit to the Union contribution through interim payments and payments of the balance**

1. Notwithstanding Article 76(3) and Article 77(2), the Union contribution through interim payments and payments of the final balance shall not be higher than the public contribution and the maximum amount of assistance from the EFF for each priority axis and objective as laid down in the decision of the Commission approving the operational programme.

2. The derogation referred to in Article 76(3) and Article 77(2) shall be granted by the Commission upon the written request of a Member State fulfilling one of the conditions laid down in points (a), (b) and (c) of Article 76(3). That request shall be submitted by 17 July 2012 or within two months from the date on which a Member State fulfils one of the conditions laid down in points (a), (b) and (c) of Article 76(3).

3. In its request submitted to the Commission, the Member State shall justify the necessity of the derogation referred to in Article 76(3) and Article 77(2) by providing information necessary to establish:

- (a) by means of data on its macroeconomic and fiscal situation, that resources for the national counterpart are not available;
- (b) that an increase of payments referred to in Article 76(3) and Article 77(2) is necessary to safeguard the continued implementation of operational programmes;
- (c) that problems persist even if the maximum ceilings applicable to co-financing rates of Article 53(3) are used;
- (d) that it fulfils one of the conditions referred to in points (a), (b) and (c) of Article 76(3) as justified by reference to a Council Decision or other legal act, as well as the actual date from which the financial assistance was made available to the Member State.

The Commission shall verify whether the information submitted justifies granting a derogation. The Commission shall raise any objection as to that information within 30 days from the date of submission of the request. If the Commission decides to object to the Member State's request, it shall, by means of implementing acts, adopt a decision to this effect and shall state reasons.

If the Commission does not raise an objection to the Member State's request, that request shall be deemed to be justified.

▼ M1

4. The Member State's request shall also detail the intended use of the derogation provided for in Article 76(3) and Article 77(2), and shall give information about complementary measures envisaged in order to concentrate the funds on competitiveness, growth and employment, including, where appropriate, a modification of operational programmes.

5. The derogation provided for in Article 76(3) and Article 77(2) shall not apply to statements of expenditure submitted after 31 December 2013.

▼ B*Article 78***Statement of expenditure**

1. All statements of expenditure shall include, for each priority axis and for each objective, the total amount of eligible expenditure paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries, according to the conditions governing the public contribution. Expenditure paid by beneficiaries shall be supported by receipted invoices or accounting documents of equivalent probative value. As regards operations not involving expenditure by the beneficiary, the expenditure certified by the certifying authority and submitted to the Commission shall be the public aid paid to the beneficiary.

2. With regard to Articles 76(2) and 77(b), the statements of expenditure shall also highlight the total amount of Community assistance paid or due to be paid to the beneficiaries.

*Article 79***Accumulation of pre-financing and interim payments**

1. The cumulative total of pre-financing and interim payments made shall not exceed 95 % of the contribution from the EFF to the operational programme.

2. When this ceiling is reached, the certifying authority shall continue transmitting to the Commission any certified statement of expenditure on the 31 December of year *n*, as well as the amounts recovered during the year for the EFF, at the latest by the end of February of year *n*+1.

*Article 80***Wholeness of payment to beneficiaries**

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



Section 3

Pre-financing

Article 81

Payment

1. Following the Commission decision approving a contribution from the EFF to an operational programme, a single pre-financing amount for the period 2007 to 2013 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 EFF to that operational programme. It may be spread to two financial years in accordance with the available budget of the EFF.
2. The total amount paid as pre-financing shall be reimbursed to the Commission by the body designated by the Member State if no application for payment under the operational programme is sent within 24 months from the date on which the Commission paid the first instalment of the pre-financing amount.
3. Any interest generated by the pre-financing shall be posted to the operational programme, being regarded as a resource for the Member State in the form of national public contribution and shall be declared to the Commission at the time of the final closure of the operational programme.
4. The amount paid as pre-financing shall be totally cleared from the Commission accounts when the operational programme is closed in accordance with Article 86.

Section 4

Interim payments

Article 82

Interim payments

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

Article 83

Acceptability of applications for payment

1. Each interim payment made by the Commission shall be subject to the following conditions being met:
 - (a) the Commission must have been sent an application for payment and a statement of expenditure, in accordance with Article 78;
 - (b) no more than the maximum amount of assistance from the EFF, as laid down in the current financing plan, has been paid by the Commission during the whole period for each priority axis and for each objective;

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- (c) the managing authority must have sent the Commission the most recent annual report on implementation, in accordance with Article 67(1) and (3);
- (d) there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty, as regards the operation(s) for which the expenditure is declared in the application for payment in question.

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

*Article 84***Procedure for payment**

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

2. Subject to available funding and the absence of the interruption of the payment deadline or suspension of payments in accordance with Articles 88 and 89 respectively, the Commission shall make the interim payment no later than two months after the date on which an application for payment meeting the conditions referred to in Article 83 is registered with the Commission.

*Section 5***Payment of the balance and programme closure***Article 85***Partial closure**

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

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

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

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

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(b) a declaration for partial closure in accordance with Article 61(1)(e)(iii).

3. Any financial corrections made in accordance with Articles 96 and 97 concerning operations subject to a partial closure shall be net financial corrections.

*Article 86***Conditions for the payment of the balance**

1. The Commission shall pay the balance, provided that:

(a) the Member State has sent an application for payment comprising the following documents by 31 March 2017:

(i) an application for payment of the balance and a statement of expenditure in accordance with Article 78;

(ii) the final report on implementation for the operational programme, including the information set out in Article 67;

(iii) a closure declaration in accordance with Article 61(1)(f);

and

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

2. Failure to send any of the documents referred to in paragraph 1 to the Commission shall automatically result in the decommitment of the balance, in accordance with Article 90.

3. The Commission shall inform the Member State of its opinion on the content of the closure declaration referred to in paragraph 1(a)(iii) within five months of the date of its receipt. The closure declaration shall be deemed to be accepted in the absence of observations by the Commission within that five-month period.

4. Subject to available funding, the Commission shall pay the balance within no more than 45 days from the later of the following dates:

(a) the date on which it accepts the final report in accordance with Article 67(4);

or

(b) the date on which it accepts the closure declaration referred to in paragraph 1(a)(iii).

5. Without prejudice to paragraph 6, the balance of the budgetary commitment shall be decommitted 12 months after the payment has been made.

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

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6. 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 may be amended within nine months of the date on which it is paid or, where there is a negative balance to be reimbursed by the Member State, within nine months of the date on which the debit note is issued. Such amendment of the balance shall not change the date of the closure of the operational programme communicated in accordance with paragraph 5.

*Article 87***Availability of documents**

1. 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 for:

- (a) a period of three years following the closure of an operational programme;
- (b) a period of three years following the year in which partial closure took place, in the case of documents regarding expenditure and audits on the operations referred to in paragraph 2.

These periods shall be interrupted either in the case of legal proceedings or at the request duly motivated of the Commission.

2. The managing authority shall make available to the Commission, on request, a list of completed operations which have been subject to partial closure under Article 85.

3. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.

Section 6**Interruption of the payment deadline and suspension of payments***Article 88***Interruption of the payment deadline**

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

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

or

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

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

*Article 89***Suspension of payments**

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

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

or

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

or

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

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

3. The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt a decision to cancel all or part of the Community contribution to the operational programme in accordance with Article 97.

Section 7**Automatic decommitment***Article 90***Principles**

1. The Commission shall automatically decommit any part of a budget commitment in an operational programme that has not been used for payment of the pre-financing or interim payments, or for which an application for payment has not been sent in conformity with Article 83, by 31 December of the second year following the year of the budget commitment under the operational programme.

2. The part of budget commitment still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable application for payment for it by 31 March 2017.

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

*Article 91***Exceptions for time limits on decommitment**

If a Commission decision subsequent to the decision approving the operational programme is needed for authorisation of assistance or of an aid scheme, the period leading to automatic decommitment shall run from the date of that subsequent decision. The amounts in question shall be established on the basis of a schedule provided by the Member State.

*Article 92***Period of interruption for legal proceedings and administrative appeals**

The amount potentially concerned by automatic decommitment shall be reduced by the amounts that the certifying authority has not been able to declare to the Commission because of operations suspended by 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 the second year following the year of the budget commitment as laid down in Article 90.

For that part of commitments still open on 31 December 2015, the time limit referred to in Article 90(2) shall be interrupted under these same conditions in respect of the amount relating to the operations concerned.

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

*Article 93***Exceptions to the automatic decommitment**

The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitment for which an application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second year following the year of the budget commitment pursuant to Article 90 and in accordance with Articles 88 and 89. When the problem resulting in the interruption or suspension has been resolved, the automatic decommitment rule shall be applied to that part of the budget commitment which is concerned;

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- (b) that part of the budget commitment for which an application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources;
- (c) that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of *force majeure* seriously affecting implementation of the operational programme. The national authorities claiming *force majeure* must demonstrate its direct consequences on the implementation of all or part of the operational programme.

*Article 94***Procedure**

1. The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of automatic decommitment under Article 90.
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.
3. The Member State shall have two months from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the time limit referred to in Article 90.
4. The contribution from the EFF to the operational programme shall be reduced, for the year concerned, by the amount automatically decommitted. The Member State shall produce within two months of the date of decommitment a revised financing plan reflecting the reduced amount of assistance over one or several of the priority axes of the operational programme. Failing this, the Commission shall reduce the amounts allocated to each priority axis proportionately.

Section 8**Use of the euro***Article 95***Use of the euro**

1. Amounts set out in the operational programme submitted by the Member State, certified statements of expenditure, applications for payment and expenditure mentioned in the annual and final reports of implementation shall be denominated in euro.
2. Commission decisions on operational programmes and Commission commitments and payments, shall be denominated and carried out in euro.
3. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert into euro the amounts of expenditure incurred in national currency.

▼B

These amounts shall be converted in euro using the monthly accounting rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. This rate shall be published electronically by the Commission each month.

4. When the euro becomes the currency of a Member State, the conversion procedure set out in the preceding paragraph shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

*CHAPTER II**Financial corrections*

Section 1

Financial corrections by Member States*Article 96***Financial corrections by Member States**

1. The Member State 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 control of operations or the operational programme 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 the operational programme. The corrections made by the Member State shall consist of cancelling all or part of the public contribution to the operational programme. The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the EFF.

Without prejudice to paragraph 3, the resources of the EFF released in this way may be re-used by the Member State until 31 December 2015 for the operational programme.

3. The contribution cancelled in accordance with paragraph 2 may not be re-used for the operation or operations that were the subject of the correction, nor, where a financial correction is made for a systemic irregularity, for existing operations within whole or part of the priority axis where the systemic irregularity occurred.

4. In the case of systemic irregularity, the Member State shall extend its enquiries to cover all operations liable to be affected.



Section 2

Financial corrections by the Commission

Article 97

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 96 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.

3. The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies found in the operational programme.

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 96(2), the information supplied under Article 70(1)(b) and any replies from the Member State.

Article 98

Procedure

1. Before taking a decision on a financial correction, the Commission shall open the procedure by informing the Member State of its provisional conclusions and requesting the Member State to submit its comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in the first subparagraph.

▼B

2. The Commission shall take account of any evidence supplied by the Member State within the time limits referred to in paragraph 1.

3. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in which both sides in cooperation based on the partnership shall make efforts to reach an agreement concerning the observations and the conclusions to be drawn from them.

4. In case of an agreement, the Member State may re-use the EFF resources concerned in conformity with the second subparagraph of Article 96(2).

5. In the absence of agreement, the Commission shall take a decision on the financial correction within six months of the date of the hearing taking account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the letter of invitation sent by the Commission.

*Article 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(2) and to recover State aid under Article 87 of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty⁽¹⁾.

*CHAPTER III****Repayment****Article 100***Repayment**

1. Any repayment due to be made to the general budget of the European Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 72 of Regulation (EC, Euratom) No 1605/2002. This due date shall be the last day of the second month following the issuing of the recovery order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by the 2003 Act of Accession. (The title of Regulation (EC) No 659/1999 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 93 of the Treaty).



TITLE IX
COMMITTEE

Article 101

Committee

1. The Commission shall be assisted by the European Fisheries Fund Committee (hereinafter referred to as the Committee).
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

4. The Committee shall adopt its own Rules of Procedure.

Article 102

Implementing rules

The implementing rules for this Regulation shall be adopted in accordance with the procedure referred to in Article 101(3).

TITLE X
FINAL PROVISIONS

Article 103

Transitional provisions

1. This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Council Regulations (EEC) No 4028/86 ⁽¹⁾, (EC) No 3699/93 ⁽²⁾, (EC) No 2468/98 ⁽³⁾ and (EC) No 2792/1999 ⁽⁴⁾ or of any other legislation which applies to such assistance on 31 December 2006, which shall consequently apply thereafter to that assistance until its closure.

⁽¹⁾ Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ L 376, 31.12.1986, p. 7). Regulation as repealed by Regulation (EEC) No 2080/93 (OJ L 193, 31.7.1993, p. 1).

⁽²⁾ Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (OJ L 346, 31.12.1993, p. 1). Regulation as repealed by Regulation (EC) No 2468/98 (OJ L 312, 20.11.1998, p. 19).

⁽³⁾ Council Regulation (EC) No 2468/98 of 3 November 1998 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products. Regulation as repealed by Regulation (EC) No 2792/1999 (OJ L 337, 30.12.1999, p. 10).

⁽⁴⁾ Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector. Regulation as last amended by Regulation (EC) No 485/2005 (OJ L 81, 30.3.2005, p. 1).

▼B

2. By way of derogation from Articles 31(2), 32(4) and 37(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds⁽¹⁾, sums committed for assistance co-financed by the Financial Instrument for Fisheries Guidance (FIFG), established by Council Regulation (EC) No 1263/1999 of 21 June 1999 on the Financial Instrument for Fisheries Guidance⁽²⁾, approved by the Commission between 1 January 2000 and 31 December 2006 for which the certified statement of expenditure actually paid, the final report on implementation, comprising also the progress report referred to in Article 1(1) of Commission Regulation (EC) No 366/2001⁽³⁾, and the declaration referred to in Article 38(1)(f) of Regulation (EC) 1260/1999 have not been sent to the Commission within 15 months after the final date of eligibility of expenditure laid down in the decision granting a contribution from the FIFG, shall be automatically decommitted by the Commission not later than six months after that deadline, giving rise to the repayment of amounts unduly paid.

3. If specific measures are necessary in order to facilitate the transition from the system in force to that established by this Regulation, such measures shall be adopted in accordance with the procedure referred to in Article 101(3).

Such measures shall, in particular, be adopted in order to integrate existing Community support approved by the Commission for the period 2000 to 2006 into the EFF support provided for by this Regulation.

*Article 104***Repeals**

1. Without prejudice to the provisions of Article 103(1), Regulations (EC) No 1263/1999 and (EC) No 2792/1999 are hereby repealed with effect from 1 January 2007.

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

*Article 105***Review**

The Council shall review this Regulation by 31 December 2013 at the latest in accordance with Article 37 of the Treaty.

*Article 106***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

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

⁽²⁾ OJ L 161, 26.6.1999, p. 54.

⁽³⁾ Commission Regulation (EC) No 366/2001 of 22 February 2001 laying down detailed rules for implementing the measures provided for in Council Regulation (EC) No 2792/1999 (OJ L 55, 24.2.2001, p. 3).

▼B*ANNEX I*

The annual breakdown of commitment appropriations for the European Fisheries Fund, in 2004 prices, as referred to in Article 12, shall be as follows:

(in EUR)

2007	2008	2009	2010	2011	2012	2013
538 501 708	544 387 564	551 260 557	551 264 533	552 866 449	554 350 809	556 368 380

▼ **B**

ANNEX II

Aid intensity

- (a) For all the measures referred to in Title IV, the limits of public contribution granted to an operation (A), and, where appropriate, by the private beneficiaries (B), shall be as set out in the Table below, expressed as a percentage of total eligible costs being the sum of (A) + (B).

For the Table below, the operations will fall within groups as follows:

▼ **A1**

	Group 1	Group 2	Group 3	Group 4
Regions covered by the Convergence objective and outlying Greek islands and the Croatian islands Dugi otok, Vis, Mljet and Lastovo	A ≤ 100 % B ≥ 0 %	A ≤ 40 % B ≥ 60 % (*) (**)	A ≤ 80 % B ≥ 20 %	A ≤ 60 % B ≥ 40 % (***)
Regions not covered by the Convergence objective	A ≤ 100 % B ≥ 0 %	A ≤ 40 % B ≥ 60 % (*) (**)	A ≤ 60 % B ≥ 40 %	A ≤ 40 % B ≥ 60 % (***)
Outermost regions	A ≤ 100 % B ≥ 0 %	A ≤ 50 % B ≥ 50 % (*) (**)	A ≤ 80 % B ≥ 20 %	A ≤ 75 % B ≥ 25 %

(*) In the case of operations referred to in Article 25(3), the (B) rates for Group 2 are increased by 20 percentage points. The (A) rates are reduced accordingly.

(**) In the case of operations referred to in Article 26(2) (investment on board within the meaning of Article 25 in small scale coastal fishing vessels), the (B) rates for Group 2 may be reduced by 20 percentage points. The (A) rates are increased accordingly.

(***) In case of operations referred to in Articles 29 and 35 when undertaken by enterprises not covered by the definition in Article 3(f) with less than 750 employees or with a turnover of less than EUR 200 million, the (B) rates are increased in the regions covered by the Convergence objective, with the exception of the outlying Greek islands and the Croatian islands Dugi otok, Vis, Mljet and Lastovo, by 30 percentage points and in the regions not covered by the Convergence objective by 20 percentage points. The (A) rates are reduced accordingly.

▼ **B**

Group 1

Operations provided for in Article 23 (public aid for permanent cessation of fishing activities), Article 24 (public aid for temporary cessation of fishing activities), Article 26(3) (socio-economic compensation for small-scale coastal fishers), Article 26(4) (premiums for fishers and vessels owners involved in small-scale coastal fishing), Article 27 (socio-economic compensation for the management of the Community fishing fleet), Article 30 (aqua-environmental measures), Article 31 (public health measures), Article 32 (animal health measures), the first subparagraph of Article 33(2) (investments on inland fishing facilities), Article 33(3) (reassignment of vessels operating in inland fishing), Article 37 (collective actions), Article 38 (measures intended to protect and develop aquatic fauna and flora), Article 39 (fishing ports, landing sites and shelters), Article 40 (development of new markets and promotional campaigns), Article 41 (pilot projects), Article 42 (modification for reassignment of fishing vessels), Article 44 (eligible measures for the sustainable development of fisheries areas) and Article 46 (technical assistance).

▼ B*Group 2*

Operations provided for under Article 25(1), (2), (6), (7) and (8) (investment on board fishing vessels), Article 26(2) (investment on board within the meaning of Article 25 in small scale coastal fishing vessels), the second subparagraph of Article 33(2) (investments on board vessels operating in inland fishing) and Article 44 (eligible measures for the sustainable development of fisheries areas).

▼ A1

Following the application of (*) and (**) where the EFF finances operations referred to in Article 25(3) in favour of small scale coastal fishing vessels, the (B) rates for Group 2 will be:

- for the regions covered by the Convergence objective, the outlying Greek islands and the Croatian islands Dugi otok, Vis, Mljet and Lastovo and the regions not covered by the Convergence objective, equal to or more than 60 percentage points ($B \geq 60\%$),
- and
- for the outermost regions, equal to or more than 50 percentage points ($B \geq 50\%$).

▼ B*Group 3*

Operations provided for in Article 37 (collective actions), Article 38 (measures intended to protect and develop aquatic fauna and flora), Article 39 (fishing ports, landing sites and shelters), Article 41 (pilot projects) and Article 44 (eligible measures for the sustainable development of fisheries areas).

Group 4

Operations provided for in Article 29 (measures for productive investments in aquaculture), the first subparagraph of Article 33(2) (investments on inland fishing facilities), Article 35 (eligible measures in processing and marketing), Article 40 (development of new markets and promotional campaigns) and Article 44 (eligible measures for the sustainable development of fisheries areas).

- (b) The managing authority shall determine with respect to operations concerning:
- (i) Article 37 (collective actions), Article 38 (measures intended to protect and develop aquatic fauna and flora), Article 39 (fishing ports, landing sites and shelters) and Article 41 (pilot projects) whether they fall under group 1 or 3,
 - (ii) Article 40 (development of new markets and promotional campaigns) and the first subparagraph of Article 33(2) (investments on inland fishing facilities) whether they fall under group 1 or 4,
 - (iii) and Article 44 (eligible measures for the sustainable development of fisheries areas) whether they fall under groups 1, 2, 3 or 4.

The managing authority shall determine the above under (i), (ii) and (iii) on the basis of the following considerations:

- collective versus individual interest,
- collective versus individual beneficiary (producers' organisations, organisations representing the trade),
- public access to the results of the operation versus private ownership and control,
- financial participation by collective bodies and research institutions.