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COMMISSION REGULATION (EC) No 951/2007

of 9 August 2007

laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument

(OJ L 210, 10.8.2007, p. 10)

Corrected by:

►**C1** Corrigendum, OJ L 221, 25.8.2009, p. 7 (951/2007)

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COMMISSION REGULATION (EC) No 951/2007

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laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument ([1]), and in particular Article 11(1) thereof,

Whereas:

(1) One of the strands of Regulation (EC) No 1638/2006 involves cooperation between the Member States of the European Union and partner countries in regions adjacent to their shared part of the external border of the European Union for the development of an area of prosperity and good neighbourliness (hereinafter ENPI cross-border cooperation).

(2) Article 11 of Regulation (EC) No 1638/2006 requires that the Commission adopt implementing rules laying down specific provisions for the implementation of Title III 'Cross-border Cooperation' and that the matters covered by the implementing rules include issues such as the rate of co-financing, preparation of joint operational programmes, the designation and functions of the joint authorities, the role and function of the joint monitoring and selection committees and of the joint secretariat, eligibility of expenditure, joint project selection, the preparatory phase, technical and financial management of Community assistance, financial control and audit, monitoring and evaluation, visibility and information activities for potential beneficiaries.

(3) Article 21 of Regulation (EC) No 1638/2006 stipulates that the implementing rules should also lay down procurement rules for ENPI cross-border cooperation.

(4) The strategy paper provided for in Article 7(3) of ►C1 Regulation (EC) No 1638/2006 ◄ establishes the strategic framework for Commission support for ENPI cross-border cooperation and contains the indicative programme for this cooperation.

(5) Community assistance for ENPI cross-border cooperation is implemented through joint operational programmes defined in the strategy paper.

(6) It is necessary to draw up implementing rules which lay down joint specific provisions for cross-border cooperation within the meaning of Regulation (EC) No 1638/2006 while allowing participating countries a certain amount of flexibility as to the detailed arrangements regarding organisation and implementation of specific programmes taking account of the particular features of each programme. On the basis of this principle and in accordance with this Regulation, the participating countries must propose, by common agreement, detailed arrangements for ENPI cross-border cooperation in the joint operational programme, for adoption by

([1]) OJ L 310, 9.11.2006, p. 1.

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the Commission in accordance with Article 9(6) of Regulation (EC) No 1638/2006.

(7) In view of the fact that all participating countries are to be involved in the decision-making structures for the programme while the task of implementation is to be entrusted to a Joint Managing Authority based in one of the participating countries there is a need for joint rules on the distribution of functions between the various programme-management structures.

(8) Since programmes are to be implemented through shared management, programme management and control systems must comply with Community rules. Adoption of the programme by the Commission must be taken as an *ex ante* accreditation of those systems. The Commission must monitor implementation of each programme by possible involvement in the Joint Monitoring Committee and by means of the reports presented to it by the Joint Managing Authority.

(9) In order to ensure full and complete participation in the programme by potential beneficiaries in partner countries and to apply the same management arrangements for those established in a Member State of the European Union as for those established in a partner country, and given that appropriations for ENPI cross-border cooperation are managed as part of the European Union's foreign policy, the contractual procedures applicable to external actions financed by the European Commission must be used for all projects financed as part of the cross-border cooperation established by Regulation (EC) No 1638/2006.

(10) In order to ensure effective implementation of the programme, evaluation and monitoring arrangements need to be laid down.

(11) These measures are in line with the opinion of the Committee established by Council Regulation (EC) No 1638/2006,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTION

Article 1

Subject and scope

This Regulation lays down rules for the implementation of Regulation (EC) No 1638/2006 in relation to cross-border cooperation programmes.

Article 2

Definitions

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

1. ‘technical assistance’ means preparatory work, management, monitoring, evaluation, information, audit and control, and any administrative capacity-building activities necessary for implementation of the joint operational programmes;

2. ‘beneficiary’ means a body which signs a grant contract with the Joint Managing Authority and which assumes full legal and financial responsibility for project implementation vis-à-vis that authority; it receives the financial contribution from the Joint Managing Authority and ensures it is managed and, where appropriate, distributed in accordance with the agreements drawn up with its partners; it

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alone is responsible to the Joint Managing Authority and it is directly accountable to the authority for the operational and financial progress of activities;

3. ‘contractor’ means a body which signs a service, works or supply contract with the Joint Managing Authority and which assumes full legal and financial responsibility for implementation of that contract vis-à-vis the Joint Managing Authority;

4. ‘strategy paper’ means the document which is referred to in Article 7(3) of Regulation (EC) No 1638/2006 and which establishes the list of the joint operational programmes, their multiannual indicative envelope and territorial units eligible within each programme;

5. ‘participating countries’ means all Member States and partner countries taking part in the joint operational programme;

6. ‘partner countries’ means the countries and territories listed in the Annex to Regulation (EC) No 1638/2006;

7. ‘large-scale projects’ means projects comprising a set of works, activities or services intended to fulfil an indivisible function of a precise nature pursuing clearly identified objectives of common interest for the purposes of implementing cross-border investments;

8. ‘own resources of the countries participating in the joint operational programme’ means financial resources from the central, regional or local budget of the participating countries;

9. ‘operational follow-up of the projects’ means follow-up of the operations financed by the programme in accordance with the method for the project-management cycle, from programming to technical monitoring of implementation to evaluation.

CHAPTER II

BASIC DOCUMENTS

SECTION 1

Joint operational programmes

Article 3

Preparation of joint operational programmes

Each joint operational programme shall be defined by common agreement of all the participating countries, in accordance with Regulation (EC) No 1638/2006, the strategy paper and this Regulation.

Article 4

Content of joint operational programmes

Each joint operational programme shall describe the objectives, priorities and measures concerning the operations to be undertaken and shall explain how they fit in with other ongoing or planned bilateral and multilateral programmes in the countries and regions concerned, in particular programmes financed by the European Union.

In particular, each joint operational programme shall:

(a) list the territorial units eligible, including the possible adjacent regions, as locations for projects financed by the programme, as defined in Regulation (EC) No 1638/2006 and the strategy paper;

(b) lay down rules for participation in the programmes by adjacent areas in third countries which are not covered by Regulation (EC)

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No 1638/2006 but which are allowed to take part in cooperation on the basis of the strategy paper;

(c) lay down priorities and measures addressing the objectives identified in the strategy paper;

(d) set out the composition of the Joint Monitoring Committee in accordance with Article 11 of this Regulation;

(e) identify the body appointed by the participating countries to perform the role of Joint Managing Authority;

(f) describe the structure that will be set up by the Joint Managing Authority for the management of the programme in accordance with Articles 14, 15, 16 and 17 of this Regulation. This description shall be detailed enough to enable the Commission to be reasonably confident that effective and efficient internal control systems have been put in place, based on best international practices;

(g) include a financial table describing the provisional yearly allocations of commitments and payments under the programme, established in accordance with the priorities and specifying in particular the amounts allocated to technical assistance;

(h) identify programme implementation methods, in accordance with the contractual procedures referred to in Article 23 of this Regulation;

(i) specify a provisional indicative timetable for the launching of procedures and the selection of projects to be financed;

(j) describe any regulatory requirements regarding environmental impact assessment studies and give a provisional indicative timetable for the carrying-out of these studies;

(k) state the language(s) adopted by the programme;

(l) include an information and communication plan in accordance with Article 42.

The table referred to in point (g) of the second paragraph shall indicate the European Community contribution and divide the provisional indicative amounts to be committed by the Commission each year up to 2013 (the allocations for 2011-2013 shall be confirmed in the Indicative Programme for 2011-2013). The table shall also contain the provisional indicative amounts of co-financing from the own resources of participating countries.

For the purposes of point (h) of the second paragraph, the projects financed under the programme shall generally be selected following calls for proposals. Nevertheless, the participating countries may also, in agreement with the European Commission, jointly identify large-scale cross-border investment projects which will not be selected through calls for proposals: these projects shall be specifically mentioned in the programme or be selected at a later stage by the Joint Monitoring Committee, referred to in Articles 11 to 13, provided that they are consistent with the programme's priorities and measures and that there is a budget specifically for this purpose.

Article 5

Adoption of joint operational programmes

1. Each joint operational programme shall be submitted by the Joint Managing Authority to the Commission after the explicit agreement of all countries having participated in and contributed to the preparation of the programme.

2. The Commission shall examine the joint operational programme in order to verify that it contains all the elements referred to in Article 4, which shall involve in particular:

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(a) assessing its conformity with the strategy paper;

(b) checking the quality of the analysis, its consistency with the proposed priorities and measures, and its consistency with the other bilateral and multilateral programmes ongoing or planned in the regions concerned by the programme;

(c) verifying that the programme complies with the Community legislation applicable;

(d) checking that any environmental impact assessment studies that may be required have been carried out or are planned before the proposed projects are implemented;

(e) ensuring the consistency of the financial table for the programme, particularly with regard to the amounts to be committed by the Commission;

(f) ensuring the management capacity of the Joint Managing Authority is commensurate with the volume, content and complexity of the operations planned under the programme. In particular, the Commission shall check that the Joint Managing Authority has sufficient properly qualified human resources fully dedicated to the programme, the requisite computerised management and accountancy tools and financial circuits that comply with the relevant Community legislation. These checks may be carried out through an *ex ante* on-the-spot audit, if considered necessary by the Commission;

(g) ensuring that the Joint Managing Authority has planned for and set up satisfactory internal control and audit systems, based on international best practices.

3. Following the review of the joint operational programme, the Commission may ask the participating countries to provide additional information or, where necessary, to revise certain parts.

4. The adoption of each joint operational programme shall be taken as an *ex ante* accreditation by the Commission of the management and control structures set up by the Joint Managing Authority.

5. Each joint operational programme shall be adopted by a Commission decision for the whole of the programme's duration.

Article 6

Monitoring and evaluation of joint operational programme

1. The aim of monitoring and evaluating each joint operational programme shall be to improve the quality, effectiveness and consistency of implementation. The findings of evaluations shall be taken into account in future programming exercises.

2. A mid-term evaluation of the joint operational programme shall be carried out as part of the programme review in accordance with the strategy paper.

This evaluation shall be carried out by the Commission, and its results, which shall be communicated to the Joint Monitoring Committee and Joint Managing Authority for the indicative programme may lead to adjustments in the programme.

3. In addition to the mid-term evaluation, an evaluation of the joint operational programme, or a part thereof, may be carried out at any moment by the Commission.

4. In the year following the end of the implementation phase of the projects financed by the joint operational programme, an *ex post* evaluation of the programme shall be carried out by the Commission.

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Article 7

Revision of joint operational programmes

1. Adjustments to the joint operational programme financial table which merely involve the transfer from one priority to another of no more than 20 % of the Community funds initially allocated to each priority may be made directly by the Joint Managing Authority, with the prior approval of the Joint Monitoring Committee. The Joint Managing Authority shall inform the Commission of any such changes.

This rule shall apply to technical assistance financed by Community funds only with the written prior approval of the Commission.

2. Following a reasoned request from the Joint Monitoring Committee or at the initiative of the Commission in agreement with the Joint Monitoring Committee, joint operational programmes may be reviewed and, if necessary, revised in the following cases:

(a) in order to make allowance for major socio-economic changes or substantial changes in Community, national or regional priorities in the area covered by the programme;

(b) following implementation difficulties giving rise to substantial delays;

(c) where there is a transfer of Community funds from one priority to another going beyond the margin of flexibility referred to in paragraph 1 of this Article;

(d) following the evaluations referred to in Article 6(2) and 6(3);

(e) where the programme is terminated in accordance with Article 44.

3. Any revision of a joint operational programme in the cases referred to in paragraph 2 shall be adopted by a decision of the Commission and shall require the signing of an amendment to the financing agreements referred to in Article 10.

Article 8

Use of languages

1. The management structures for joint operational programmes shall use one or more of the European Union's official languages as their working language(s).

2. In order to take account of the partnership nature of the programmes, the project beneficiaries may submit to the Joint Managing Authority documents concerning their project in their national language, provided that this possibility is specifically mentioned in the programme and that the Joint Monitoring Committee makes provision, through the Joint Managing Authority, for any interpretation and translation that may be necessary.

3. Interpreting and translation costs for all languages selected by the programme shall be met:

(a) from the technical assistance budget at joint operational programme level;

(b) from the budget of each individual project at project level.

Article 9

Starting phase of joint operational programmes

1. Following the adoption of the joint operational programme by Commission decision, the programme shall start immediately in the Member States with the allocation in the European Neighbourhood

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and Partnership Instrument for cross-border cooperation from heading 1B of the Financial Perspective (Interinstitutional Agreement 2006/C 139/01) [1]. Joint actions required to launch the programme may also be undertaken, namely:

(a) the establishment of the Joint Managing Authority and of the Joint Technical Secretariat;

(b) the first meetings of the Joint Monitoring Committee, including representatives of partner countries that have not yet signed a financing agreement;

(c) the preparation and launching of tender procedures or calls for proposals, if necessary with a suspension clause linked to the signing of the financing agreements.

2. Commission decisions referred to in paragraph 1 shall be applicable in each partner country from the signing of a financing agreement by the country in accordance with Article 10.

SECTION 2

Financing agreement

Article 10

Signing of financing agreements

1. A financing agreement shall be established between the Commission and each partner country for each joint operational programme. The Joint Managing Authority designated under each joint operational programme may countersign the financing agreement.

2. The joint operational programme adopted by the Commission shall be a technical annex to the financing agreement.

3. Each financing agreement shall be concluded at the latest before the end of the year which follows the year of the Commission decision adopting the joint operational programme (N+1 rule).

4. If the financing agreement is not concluded within the time-limit, the external component of the joint operational programme with the partner country may not be launched.

Where a programme includes several partner countries, it may be launched with each partner country as soon as that country has signed its financing agreement.

5. If no partner country signs a financing agreement within the set time limit, the external component of the joint operational programme shall become null and void and paragraphs 3 and 4 of Article 44 shall apply.

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[1] Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, OJ C 139, 14.6.2006, p. 1.

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CHAPTER III

MANAGEMENT STRUCTURES FOR JOINT OPERATIONAL PROGRAMMES

SECTION 1

Joint Monitoring Committee

Article 11

Composition of the Joint Monitoring Committee

1. The Joint Monitoring Committee shall comprise representatives appointed by each participating country to take all decisions concerning the joint operational programme within the competence of the committee. Members shall be appointed as representatives of their countries on a functional basis and not on a personal basis. The committee shall also include a chairperson and a secretary. The secretary shall be chosen from the members of the Joint Managing Authority.

2. In addition to the duly appointed representatives, it is important that the participating countries ensure the adequate participation of the civil society (local authorities, economic and social partners, civil society) to ensure the close association of different local stakeholders in the implementation of the joint operational programme.

3. The Commission shall be invited to each meeting of the Joint Monitoring Committee at the same time as the participants and shall be informed of the results of its deliberations. It may take part in all or part of each committee meeting on its own initiative, as an observer and without any decision-making power.

Article 12

Functioning of the Joint Monitoring Committee

1. The appointed members of the Joint Monitoring Committee shall adopt its rules of procedure unanimously.

2. The Joint Monitoring Committee shall take decisions by consensus. However, it may put certain decisions to a vote, particularly those relating to the final selection of projects and the grant amounts allocated to them. Within this voting procedure, each country has only one vote whatever the number of its representatives.

3. The appointed representatives shall elect a chairperson. The committee may decide to elect a representative of the Joint Managing Authority or another outside person as chairperson.

The chairperson of the Joint Monitoring Committee shall act as arbitrator and lead discussions. The chairperson shall retain their vote, unless the position of chairperson has been given to a representative of the Joint Managing Authority or another outside person. In the latter case, the chairperson shall have no vote.

4. The Joint Monitoring Committee shall meet as often as necessary and at least once a year. It shall be convened by its chairperson at the request of the Joint Managing Authority or following a duly justified request from one of its appointed members or from the Commission. It may also take decisions through written procedure at the initiative of its chairperson, the Joint Managing Authority or one of the participating countries. In case of a disagreement, any member may request that the decision be discussed at a meeting.

5. Minutes shall be drawn up after each meeting of the Joint Monitoring Committee for signature by the chairperson and the secretary.

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Minutes shall be given to each member of the committee and to the Commission.

Article 13

Functions of the Joint Monitoring Committee

As part of its functions with regard to the joint operational programme, the committee shall:

(a) approve the Joint Managing Authority's work programme;

(b) decide on the volume and allocation of the programme's resources for technical assistance and human resources;

(c) at each of its meetings, review the management decisions taken by the Joint Managing Authority;

(d) appoint the project-selection committees;

(e) decide on the selection criteria for the projects and take the final decision on projects and on the amounts granted to them;

(f) at each of its meetings and on the basis of the documents submitted by the Joint Managing Authority, evaluate and monitor progress towards the objectives of the joint operational programme;

(g) review all reports submitted by the Joint Managing Authority and, if necessary, take appropriate measures;

(h) examine any contentious cases of recovery brought to its attention by the Joint Managing Authority.

If, when taking decisions referred to in point (e) of the first paragraph, the Joint Monitoring Committee decides not to follow all or part of the recommendations of the selection committee, it shall explain its decision in writing. The decision shall then be sent via the Joint managing authority to the Commission for prior approval. Commission communicates its opinion to the Joint Managing Authority within 15 working days.

Duties of the Joint Managing Authority shall be performed in compliance with regulations and provisions in force. The Joint Managing Authority is responsible for ensuring that decisions of the Joint Monitoring Committee comply with these rules.

SECTION 2

Joint Managing Authority

Article 14

Organisation of the Joint Managing Authority

1. The Joint Managing Authority shall, normally, be a national, regional or local public sector body. The Joint Managing Authority may also be a body governed by private law with a public-service mission.

This body must satisfy appropriate financial requirements and comply with the conditions provided for in Council Regulation (EC, Euratom) No 1605/2002 ([1]), in particular Article 54 thereof, and Commission Regulation (EC, Euratom) No 2342/2002 in particular Articles 38, 39 and 41 thereof ([2]).

([1]) OJ L 248, 16.9.2002, p. 1.
([2]) OJ L 357, 31.12.2002, p. 1.

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2. The participating countries shall entrust the Joint Managing Authority with the tasks involved in implementing the joint operational programme which have been entrusted to them as part of programme management. They shall be responsible, within the Joint Monitoring Committee, for checking that funds are used in accordance with the rules and principles governing programme management.

3. The functioning of the Joint Managing Authority may be financed from the Community contribution for technical assistance and from the co financing, in particular from the contributions in kind provided for in Article 19(3).

4. The accounts established by the Joint Managing Authority shall be subject to an annual *ex post* external audit carried out by an independent organisation as referred to in Article 31.

5. The organisation of the Joint Managing Authority shall be based on international best practice in management and internal control and shall draw on management and internal control systems suited to the carrying out of its tasks in such a way as to ensure that its operations comply with laws, other rules and the principle of sound financial management.

In particular, operational management functions and financial management functions shall be organised separately within the Joint Managing Authority. The functions of authorising officer and accounting officer shall be separate and mutually incompatible.

6. The Joint Managing Authority shall have an internal audit service which shall be independent from the departments performing authorising-officer, accounting-officer and management functions.

7. The Joint Managing Authority shall put in place procedures to ensure that expenses declared under the programme are genuine and legitimate and shall establish reliable computerised accounting, monitoring and financial information systems.

8. The Joint Managing Authority shall in particular respect the conditions and payment deadlines for the grant agreements and procurement contracts that it signs with third parties. Using appropriate verification procedures, it shall ensure that the funds paid under grant agreements or procurement contracts are used only for the purposes for which they were granted.

A general system shall be used for the management of accounts and the administrative and financial monitoring of grants and contracts (correspondence, follow-up letters or reminders, receipt of reports, etc.).

9. The Joint Managing Authority shall without delay notify the Commission and the Joint Monitoring Committee of any change in its procedures or its organisation, or any other circumstance likely to affect programme implementation.

10. The Joint Managing Authority, and the various beneficiaries, contractors and partners with which it signs contracts for the implementation of the projects, shall be subject to controls by the Commission, the European Court of Auditors and the European Anti-Fraud Office (OLAF).

Article 15

Functions of the Joint Managing Authority

1. The Joint Managing Authority shall be responsible for managing and implementing the joint operational programme, including technical assistance, in line with the principle of sound financial management and the principles of economy, efficiency and effectiveness, and shall carry out any controls necessary in accordance with the rules and procedures provided for by the relevant regulations.

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2. The various tasks of the Joint Managing Authority shall include:

(a) organising and acting as a secretariat for meetings of the Joint Monitoring Committee, including drawing-up the minutes of the meetings;

(b) preparing detailed annual budgets for the programme and payment requests for the Commission;

(c) drawing up annual operational and financial reports and sending them to the Joint Monitoring Committee and the Commission;

(d) implementing, through its internal audit service, an audit programme to check internal circuits and to ensure that procedures are properly applied within the Joint Managing Authority; annual internal audit reports shall be sent to the Joint Monitoring Committee and the Commission;

(e) launching, after approval by the Joint Monitoring Committee, calls for tenders and calls for proposals for the selection of projects;

(f) receiving project applications, organising, chairing and acting as secretariat for selection committees, and sending reports including selection committee recommendations to the Joint Monitoring Committee and the Commission;

(g) following up the selection of projects by the Joint Monitoring Committee, signing contracts for the various projects with beneficiaries and contractors;

(h) carrying out operational follow-up and financial management of the projects;

(i) immediately notifying the Joint Monitoring Committee of all contentious cases of recovery;

(j) carrying out any environmental impact assessment studies at programme level;

(k) implementing the information and visibility plan in accordance with Article 42.

Article 16

Joint Technical Secretariat

1. Each Joint Managing Authority may, with the prior agreement of the Joint Monitoring Committee, use a Joint Technical Secretariat with the requisite resources to assist it with the day-to-day management of the activities under the joint operational programme.

The operation of the Joint Technical Secretariat shall be financed from the technical assistance budget.

2. The Joint Technical Secretariat may, if necessary, establish small branch offices in participating countries for the purpose of informing potential beneficiaries in those countries of activities planned under the programme.

Article 17

Principle of continuity

Where an existing Joint Managing Authority with Commission-approved systems for the management of previous or ongoing programmes is reappointed to manage a joint operational programme, it shall not be necessary to modify the Joint Managing Authority's organisational arrangements, provided the systems used meet the requirements of this Regulation.

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CHAPTER IV

FINANCIAL MANAGEMENT OF THE JOINT OPERATIONAL PROGRAMMES

SECTION 1

Financing

Article 18

Technical assistance financed by the Community contribution

No more than 10 % of the Community's total contribution to a joint operational programme may be allocated to technical assistance.

However, on a case-by-case basis and if warranted by the level of expenditure incurred during previous years of implementation and forecast legitimate programme requirements, an increase in the amount of the technical assistance initially allocated to the programme may be considered.

Article 19

Co-financing sources

1. Co-financing shall come from the own resources of the countries or bodies participating in each joint operational programme.

2. Within each joint operational programme the participating countries shall be free to determine the source, amount and distribution of co-financing between objectives and priorities.

3. Contributions in kind from the Joint Managing Authority may be considered as co-financing, subject to the prior approval of the Commission. In this case they shall be explicitly mentioned in the programme document.

Article 20

Co-financing rate

1. Co-financing shall amount to at least 10 % of the Community contribution to the joint operational programme, minus the amount of technical assistance financed from the Community contribution.

2. Where possible, co-financing shall be distributed in a balanced way throughout the duration of the programme in such a way that the minimum objective of 10 % is achieved by the end of the programme.

Article 21

Bank account of the joint operational programme and interest on pre-financing

1. A single bank account in euro, specifically dedicated to the programme, shall be opened and managed by the service acting as accounting officer within the Joint Managing Authority. The account shall be set up in such a way that the transactions require signatures of both the authorising officer and the accounting officer.

2. If the bank account bears interest, any interest generated by the pre-financing payments shall be assigned to the joint operational programme and shall be declared to the Commission in the final report referred to in Article 32.

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Article 22

Accounts for the joint operational programme

Accounts for the joint operational programme shall be drawn up by the service within the Joint Managing Authority responsible for financial transactions. These accounts shall be independent and separate and shall include only transactions relating to the joint operational programme. They shall be kept in such a way as to enable analytical monitoring of the programme by objective, priority and measure.

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The Joint Managing Authority shall present the Joint Monitoring Committee and the Commission with reports reconciling these accounts with the balance in the bank account for the programme to accompany the annual report and any request for additional pre-financing.

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Article 23

Contractual procedures

1. The contractual procedures for procurement contracts and grants necessary for implementation of the joint operational programme by the Joint Managing Authority shall be those applicable to external actions as defined in Articles 162 to 170 of Council Regulation (EC, Euratom) No 1605/2002 and Articles 231 to 256 of the Commission Regulation (EC, Euratom) No 2342/2002.

The procedures and related standard documents and contract templates to be used shall be those included in the Practical Guide to contract procedures for EC external actions with annexes in force at the time of the launching of procurement procedures or calls for proposals.

2. The eligibility rules for participation in the calls for tenders and calls for proposals shall be those referred to in Article 14 of Regulation (EC) No 1638/2006 in conformity with Articles 40 and 41 of this Regulation.

3. These provisions shall be applicable to the entire geographical area of the programme, both on the territory of the Member States and on the territory of the partner countries.

SECTION 2

Payments

Article 24

Annual commitments by the Commission

Further to the initial commitment accompanying the decision adopting the joint operational programme, the Commission shall each year make the corresponding commitment no later than 31 March of the year concerned. The amount of this commitment shall be determined in accordance with the financial table detailing the provisional yearly allocations in the joint operational programme, and shall also depend on the programme's progress and the availability of funds. The Commission shall inform the Joint Managing Authority of the exact date on which the annual commitment is made.

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Article 25

Common rules for payments

1. The Commission shall make each payment from the Community contribution, subject to the availability of funds. The Commission shall automatically deduct any payment to the Joint Managing Authority from the oldest annual commitment tranche until the entire amount of this commitment has been spent. When the oldest annual commitment tranche has been entirely spent, the next annual commitment tranche may be used.

2. Payments shall be made in euro to the bank account of the joint operational programme.

3. Payments may take the form of pre-financing or the final balance.

Article 26

Pre-financing

1. Each year, once the Joint Managing Authority has been notified of the budgetary commitment, it may request, as pre-financing, the transfer of up to 80 % of the Community contribution to the budget for the year in question.

From the second year of the joint operational programme, requests for pre-financing shall be accompanied by the provisional annual financial report covering all expenditure and revenue from the previous year not yet certified in the annual external audit report, and by the provisional budget detailing the Joint Managing Authority's commitments and payments for the following year.

After reviewing this report, assessing actual financing needs for the programme and verifying the availability of funds, the Commission shall proceed with the payment of all or part of the requested pre-financing.

2. In the course of the year, the Joint Managing Authority may ask for the transfer of all or part of the balance of the annual Community contribution, as additional pre-financing.

In support of its request, the Joint Managing Authority shall submit an interim financial report showing that the expenditure actually incurred or likely to be incurred before the end of the year exceeds the amount of pre-financing already granted.

Such subsequent transfers shall constitute additional pre-financing in so far as they are not certified by an external audit report.

3. In the second half of each year of the programme's implementation, the Commission shall clear previous pre-financing payments on the basis of eligible expenditure actually incurred, as certified by the annual external audit report referred to in Article 31.

On the basis of the results of this clearance, the Commission may proceed with the necessary financial adjustments.

Article 27

Recovery

1. The Joint Managing Authority shall be responsible for the recovery of any unjustified or ineligible expenditure and for the reimbursement to the Commission of its share or amounts recovered, in proportion to its contribution to the programme.

Where ineligible expenditure already covered by a payment is identified on receipt of the final report for a contract or following a control or an

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audit, the Joint Managing Authority shall make out recovery orders to the beneficiaries or contractors concerned.

2. Where the recovery relates to a claim against a beneficiary, contractor or partner established in a Member State and the Joint Managing Authority is unable to recover the debt within one year of issuing the recovery order, the Member State in which the beneficiary, contractor or partner is established shall pay the amount owing to the Joint Managing Authority and claim it back from the beneficiary, contractor or partner.

3. Where the recovery relates to a claim against a beneficiary, contractor or partner established in a partner country and the Joint Managing Authority is unable to recover the debt within one year of the issuing of the recovery order, the Joint Managing Authority shall refer the case to the Commission, which, on the basis of a complete file, shall take over the task of recovering the amounts owing from the beneficiary, contractor or partner established in the partner country or directly from the national authorities of that country.

4. Files transferred to a Member State or to the Commission shall contain all the documents needed for recovery as well as proof of steps taken by the Joint Managing Authority to the beneficiary or contractor with a view to recovering the amounts owed.

5. The Joint Managing Authority shall exercise due diligence to ensure reimbursement within one year of the issuing of the recovery order. In particular it shall ensure that the claim is certain, of a fixed amount and due. Where the Joint Managing Authority is planning to waive recovery of an established debt, it shall ensure that the waiver is in order and complies with the principles of sound financial management and proportionality. The waiver decision must be substantiated and submitted to the Commission and the Joint Monitoring Committee for prior approval.

6. When the debt has not been recovered or a complete file, as referred to in paragraph 4, has not been transferred to the Member State or the Commission, due to the negligence of the Joint Managing Authority, the Joint Managing Authority shall remain responsible for the recovery after the one year period has elapsed and the amounts due shall be declared ineligible for Community financing.

7. Pursuant to paragraphs 2 and 3, the contracts concluded by the Joint Managing Authority as part of the programme shall contain a clause allowing the Commission or the Member State concerned to carry out recovery from a beneficiary, contractor or partner where the claim is still open one year after the issue of the recovery order by the Joint Managing Authority.

SECTION 3

Reports

Article 28

Annual reports of the Joint Managing Authority

1. Each year, by 30 June at the latest, the Joint Managing Authority shall submit to the Commission an annual report, approved by the Joint Monitoring Committee and certified by the audit report referred to in Article 31, on implementation of the joint operational programme from 1 January to 31 December of the previous year. The first annual report shall be submitted by 30 June of the second year of the programme.

2. Each annual report shall contain:

(a) a technical part describing:

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— the progress achieved in implementing the programme and its priorities,

— the detailed list of the signed contracts as well as possible difficulties encountered,

— the technical assistance activities carried out during the previous year,

— the measures undertaken to monitor, evaluate and audit projects, their results and actions undertaken to remedy to the problems identified,

— the information and communication activities,

— the programme of activities to be implemented the following year.

(b) a financial part giving, in euro, for each priority:

— the amounts allocated to the Joint Managing Authority by the Commission as the Community contribution and by the participating countries as co-financing, as well as any other possible revenue for the programme,

— the payments made and amounts recovered by the Joint Managing Authority for technical assistance and for the projects, as well as the report reconciling these with the bank account for the programme,

— the amount of eligible expenditure incurred by the projects as presented by the beneficiaries in their reports and payment requests,

— the provisional budget (commitments and expenditure) of the Joint Managing Authority for the following year.

(c) a declaration signed by the representative of the Joint Managing Authority giving an assurance that the management and control systems set up by the programme in the course of the previous year continue to comply with the model approved by the Commission and that they have operated in such a way as to warrant a reasonable degree of confidence in the correctness of the financial report and in the legality and regularity of the transactions to which it relates.

Article 29

Annual report of the internal audit service

1. The internal audit service of the Joint Managing Authority shall each year implement a control programme to check the internal circuits and ensure procedures have been correctly applied within the Joint Managing Authority. It shall draw up an annual report and send it to the representative of the Joint Managing Authority.

2. The Joint Managing Authority shall send the report referred to in paragraph 1 to the Commission and to the Joint Monitoring Committee as an annex to the annual report referred to in Article 28.

Article 30

Annual report on implementation of the audit plan for the projects

1. Each year the Joint Managing Authority shall draw up a report on the previous year's implementation of the audit plan for the projects, referred to in Article 37. The report shall describe in detail the methodology used by the Joint Managing Authority for selecting a representative sample of projects, as well as the controls carried out, the recommendations made and the conclusions drawn by the Joint Managing

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Authority in relation to the financial management of the projects concerned.

2. The Joint Managing Authority shall send the report referred to in paragraph 1 to the Commission and to the Joint Monitoring Committee as an annex to the annual report referred to in Article 28.

Article 31

External audit report

1. Independently of the external audits of the Joint Managing Authority undertaken by the administration of the country in which the Joint Managing Authority is established, the Joint Managing Authority shall call upon an independent public body or contract an independent approved auditor who is a member of an internationally recognised supervisory body for statutory auditing to carry out each year an *ex post* verification of the revenue and expenditure presented by the Joint Managing Authority in its annual financial report, in accordance with the standards and ethics of the International Federation of Accountants (IFAC).

2. The scope of the external audit shall cover the Joint Managing Authority's direct expenditure on technical assistance and project management (payments). The external audit report shall certify the statement of revenue and expenditure presented by the Joint Managing Authority in its annual financial report, and in particular it shall certify that stated expenditure has actually been incurred and is accurate and eligible.

3. The Joint Managing Authority shall send the external audit report to the Commission and to the Joint Monitoring Committee as an annex to the annual report referred to in Article 28.

Article 32

Final report

The final report on implementation of the joint operational programme shall contain *mutatis mutandis* the same elements as the annual reports, including their annexes, for the entire duration of the programme. It shall be submitted by 30 June 2016 at the latest.

SECTION 4

Eligible expenditure of the joint operational programme

Article 33

Eligible costs at joint operational programme level

1. In order to be eligible for Community financing, the expenditure of the joint operational programme must be incurred during the programme's period of execution, as defined in Article 43.

2. To be considered eligible as technical assistance costs, costs relating to the implementation of the joint operational programme by the Joint Managing Authority must:

(a) be necessary for implementing the programme in compliance with the criteria defined by the programme and by the Joint Monitoring Committee and comply with the principles of sound financial management, in particular value for money and cost-effectiveness;

(b) be recorded in the accounts of the programme, be identifiable, verifiable and backed by original supporting documents;

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(c) have been incurred in compliance with the relevant procurement procedures.

3. Subject to paragraphs 1 and 2, the following costs shall be eligible:

(a) the cost of staff assigned to the programme, corresponding to actual salaries plus social security charges and other remuneration-related costs. Salaries and costs must not exceed those normally borne by the structures hosting the Joint Managing Authority or the Joint Technical Secretariat, unless it is justified by showing that this is essential to carrying out the joint operational programme;

(b) travel and subsistence costs for staff and other persons taking part in the joint operational programme, provided they do not exceed those normally borne by the authorities appointed to manage the programme. Any flat-rate reimbursement of the subsistence costs must not exceed the rates of the scales published by the European Commission at the time of the adoption of the joint operational programme;

(c) purchase or rental costs for equipment and supplies (new or used) specifically for the purposes of the Joint Managing Authority or the Joint Technical Secretariat for implementation of the joint operational programme and costs of services, provided they correspond to market rates;

(d) the cost of consumables;

(e) indirect costs to cover administrative overheads;

(f) the subcontracting expenditure;

(g) costs deriving directly from requirements imposed by this Regulation and the programme (for example, information and visibility operations, evaluations, external audits, translations etc.) including financial service costs (in particular the cost of bank transfers).

Article 34

Non-eligible costs at joint operational programme level

The following costs relating to the implementation of the joint operational programme by the Joint Managing Authority shall not be considered eligible as technical assistance costs:

(a) debts and provisions for losses or debts;

(b) interest owed;

(c) items already financed in another framework;

(d) purchases of land or buildings;

(e) exchange-rate losses;

(f) taxes, including VAT, unless the Joint Managing Authority cannot reclaim them and the applicable regulations authorise coverage of taxes;

(g) loans to third parties;

(h) fines.

Article 35

Contributions in kind at the joint operational programme level

Any contributions in kind from the participating countries, or any other source, shall be listed separately in the budget of the joint operational programme and shall not be eligible.

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They may not be considered part of the minimum 10 % co-financing requirement for the participating countries referred to in Article 20, with the exception of the initial in-kind contribution by the Joint Managing Authority referred to in Article 19(3) of this Regulation.

The cost of staff assigned by participating countries to technical assistance for the programme shall not be considered a contribution in kind and cannot be considered as co-financing in the budget of the programme.

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Article 36

Eligible costs at projects level

1. Expenditure for each project shall be incurred during the period of execution of each relevant contract.

2. Eligible costs, non-eligible costs and the possibility of contributions in kind at project level shall be described in the contracts concluded with the beneficiaries or contractors.

SECTION 5

Control

Article 37

Annual audit plan for projects

1. From the end of the first year of the joint operational programme, the Joint Managing Authority shall each year draw up an audit plan for the projects that it finances.

2. The controls referred to in paragraph 1 shall be conducted by examining the documents or conducting on-the-spot checks of a sample of projects selected by the Joint Managing Authority based on a random statistical sampling method taking account of internationally recognized audit standards, in particular having regard to risk factors related to the projects' value, type of operations, type of beneficiary or other relevant elements. The sample shall be sufficiently representative to warrant a satisfactory level of confidence in relation to the direct controls carried out by the Joint Managing Authority on the existence, accuracy and eligibility of expenditure claimed by the projects.

Article 38

Community control

The Commission, OLAF, the European Court of Auditors and any external auditor authorised by these institutions may verify, by examining the documents or conducting on-the-spot checks, the use of Community funds by the Joint Managing Authority and the various project beneficiaries and partners.

These checks may take the form of a full audit on the basis of the supporting documents for the accounts, accounting documents and any other document relevant to the financing of the joint operational programme (including, for the Joint Managing Authority, all documents related to the selection procedures and to contracts) and of the project.

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Article 39

National control system

Member States may set up a control system making it possible to verify the soundness of the expenditure declared for operations or parts of operations implemented on their territories, and the compliance of such expenditure and of related operations, or parts of those operations, with Community rules and their national rules.

CHAPTER V

PROJECTS FINANCED BY THE JOINT OPERATIONAL PROGRAMMES

Article 40

Bodies participating in projects under the joint operational programmes

1. Projects shall be submitted by applicants representing partnerships consisting of at least one partner from a Member State participating in the programme and at least one partner from a partner country participating in the programme.

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2. The applicants and partners referred to in paragraph 1 shall be established in regions defined in Article 4(a) and (b) and comply with the eligibility criteria defined in Article 23(2) of this Regulation.

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In cases where the projects' objectives cannot be achieved without the participation of partners established in regions other than those defined in the first subparagraph, participation of these other partners can be accepted.

Article 41

Nature of projects

The nature of these projects may be of three kinds:

(a) integrated projects, where each partner carries out a part of the activities of the joint project on its own territory;

(b) symmetrical projects, where similar activities are carried out in parallel in Member States and in partner countries;

(c) projects implemented mainly or entirely in a Member State or a partner country but for the benefit of all or some of the partners involved in the joint operational programme.

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Projects shall take place in regions defined in Article 4(a) and (b) of this Regulation.

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In exceptional cases, if necessary for achieving projects' objectives, projects can take place partially in regions other than those defined in the second paragraph.

Article 42

Information and visibility of the joint operational programme

1. The Joint Managing Authority shall be responsible for implementation of information and visibility actions relating to the joint opera-

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tional programme. In particular, the Joint Managing Authority shall take all necessary steps to ensure the visibility of the Community financing or co-financing in relation to its own activities and to the activities of the projects financed under the programme. Such measures shall comply with the relevant rules on the visibility of external actions laid down and published by the Commission.

2. The responsibility of any branch offices of the Joint Technical Secretariat which might be set up in participating countries shall be to publicise activities under the joint operational programme and to provide anyone who may be interested with information.

CHAPTER VI

CLOSURE OF JOINT OPERATIONAL PROGRAMMES

Article 43

Duration of the joint operational programmes

1. The period of execution of each joint operational programme shall start at the earliest at the date of the adoption of the joint operational programme by the Commission and end on 31 December 2016 at the latest.

2. This period of execution shall comprise the following phases:

(a) an implementation phase for the joint operational programme with a maximum duration of seven years ending at 31 December 2013 at the latest. No call for tenders or call for proposals may be launched and no contract may be signed after this date, with the exception of audit and evaluation contracts;

(b) an implementation phase for projects financed by the joint operational programme starting at the same time as the implementation phase for the programme and ending on 31 December 2014 at the latest. All activities of projects financed by the programme shall end by that date at the latest;

(c) a financial closure phase for the joint operational programme including the financial closure of all contracts concluded as part of the programme, the *ex post* evaluation of the programme, the submission of the final report and the final payment or final recovery by the Commission. This phase shall end on 31 December 2016 at the latest.

Article 44

Early termination of the programme

1. In the cases described in Article 9(10)(c) and (d) of Regulation (EC) No 1638/2006 and in other duly justified cases, the Commission may decide to terminate the joint operational programme before the expiry date of the period of execution, at the request of the Joint Monitoring Committee or on its own initiative after having consulted the Joint Monitoring Committee.

2. In this case the Joint Managing Authority shall refer the request to the Commission and transmit the final report within the deadline of three months following the decision of the Commission. After clearing the previous pre-financing payments, the Commission shall pay the final balance or, where appropriate, issue the final recovery order vis-à-vis the Joint Managing Authority. The Commission shall also decommit the balance of commitments.

3. Where the programme is terminated because partner countries do not sign financing agreements within the required deadlines, budgetary

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allocations already committed to cross-border cooperation under the European Neighbourhood and Partnership Instrument under heading 1B of the Financial Perspective (Interinstitutional Agreement 2006/C 139/01) shall remain available for their normal lifetime but may be used only for activities which take place exclusively in the Member States concerned. The European Neighbourhood and Partnership Instrument allocations committed to the cross-border cooperation from heading 4 of the Financial Perspectives (Interinstitutional Agreement 2006/C 139/01) shall be decommitted.

4. If partner countries do not sign the financing agreement or the Commission decides to terminate the joint operational programme before the normal expiry date of the programme, the following procedure shall apply:

(a) for the European Neighbourhood and Partnership Instrument allocations for cross-border cooperation from heading 1B of the Financial Perspective (Interinstitutional Agreement 2006/C 139/01), the amounts earmarked for future annual commitments of the joint operational programme concerned shall be used within the framework of the European Regional Development Fund (ERDF) in accordance with the procedures referred to in Article 9(10) of Regulation (EC) No 1638/2006;

(b) for the European Neighbourhood and Partnership Instrument allocations for cross-border cooperation from heading 4 of the Financial Perspectives (Interinstitutional Agreement 2006/C 139/01), the amounts earmarked for future annual commitments of the joint operational programme concerned shall be used to finance other programmes or projects eligible under Regulation (EC) No 1638/2006.

Article 45

Keeping of documents

The Joint Managing Authority and the various project beneficiaries and partners shall, for seven years from the date of payment of the balance for the programme or for a project, keep all documents related to the joint operational programme or a project, in particular the reports and supporting documents as well as accounts, accounting documents and any other document relating to the financing of the joint operational programme (including, for the Joint Managing Authority, all documents relating to the selection and to contracts) and of the project.

Article 46

Closure of the programme

1. A joint operational programme shall be considered closed after:

(a) all the contracts concluded under the programme have been closed;

(b) the final balance has been paid or reimbursed;

(c) remaining appropriations have been decommitted by the Commission.

2. The closure of the operational programme shall not prejudice the Commission's right to undertake, at a later stage, financial corrections vis-à-vis the Joint Managing Authority or the project beneficiaries if the final amount of the programme or the projects has to be readjusted as a result of controls carried out after the closure date.

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CHAPTER VII

FINAL PROVISIONS

Article 47

Entry into force

This Regulation shall enter into force on the seventh 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.