

**Rules and conditions applicable to actions
co-financed from Structural Funds
and Cohesion Fund**

**An overview of the eligibility rules
in the programming period 2007-2013**

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1. Introduction

This brochure provides an overview of the rules governing the eligibility of expenditure for co-financing from the Structural Funds and Cohesion Fund ("the Funds") in the programming period 2007-2013 in accordance with the existing regulations¹. It is directed at those responsible in the Member States and their regions for managing and implementing cohesion policy programmes.

The purpose of the Structural Funds (European Regional Development Fund – ERDF - and European Social Fund - ESF) and the Cohesion Fund (CF) under Article 158 of the Treaty is to strengthen the economic and social cohesion of the enlarged European Union in order to promote the harmonious, balanced and sustainable development of the Community (Article 3 of Regulation (EC) No 1083/2006). To ensure that these objectives are attained, there need to be some rules and conditions governing what activities and costs can be financed with the Funds.

The management of cohesion policy programmes is shared between the Commission and the Member States. Therefore, the rules and conditions governing the use of the Funds are laid down partly in Community regulations and partly in national legislation and administrative provisions. The principle is that national provisions are applicable in the absence of Community rules and where the national provisions are stricter than EC rules.

There are several dimensions of eligibility:

- Geographical location – only certain areas are eligible for particular types of programme or activity;
- Scope of intervention – there are restrictions on the types of activity that can be co-financed from the different Funds;
- Cost categories – certain cost categories are excluded;
- Time – there are limits on the period during which expenditure can take place; and
- Level or incidence of the expenditure – which is the relevant point in the payments chain for counting expenditure?

There are also a number of additional conditions for expenditure to be (or remain) eligible, in particular:

¹ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999; Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999; Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999; Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94; Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund.

- Compliance with other Community rules and policies – all activities financed by the Funds must comply with Community rules and policies such as public procurement, competition, the environment and equal opportunities;
- Publicity requirements - EC funding of operations must be adequately publicised;
- "Real costs" principle – with certain exceptions, only costs actually borne by the beneficiary and supported by invoices or documents of equivalent probative value are eligible;
- Retention of supporting documents – evidence of expenditure and of compliance with all funding conditions must be kept for a minimum period; and
- Durability of operations - investments must be kept in operation for a minimum period.

The following sections provide an overview of the applicable provisions in each of the above-mentioned areas. The Community rules are summarized in section 2 below and the principles governing the national rules in section 3. To aid readability, references to the relevant Community legislation and to guidance notes giving the Commission services' interpretation of particular provisions are put at the end of each section. The main provisions relevant to eligibility are reproduced in full in the annex.

The text of the brochure will be adapted in the light of the changes made as a result of the current negotiations on amendments to the regulations.

2. EU eligibility rules

2.1 Geographical eligibility – location of the activity

The criteria for the eligibility of Member States and regions for co-financing from the ERDF, ESF and CF under the three Objectives “Convergence”, “Regional Competitiveness and Employment” and “European Territorial Cooperation” are laid down in Articles 5-7 of Regulation (EC) No 1083/2006. Where eligibility is restricted, the Commission determined the eligible Member States and regions in 2006, applying the relevant criteria.

Under the European Territorial Cooperation Objective, a limited proportion of the expenditure declared can be incurred outside the eligible areas.

References:

Commission decisions determining eligible Member States and regions

- Convergence - Commission Decision 2006/595/EC of 4 August 2006, OJ L 243 of 6.9.2006, p. 44
- Cohesion Fund - Commission Decision 2006/596/EC of 4 August 2006 drawing up the list of Member States eligible for the Cohesion Fund, OJ L 243 of 6.9.2006, p. 47;

- European Territorial Cooperation - Commission Decision 2006/769/EC of 31 October 2006 drawing up the list of regions and areas eligible under the European territorial cooperation objective, OJ L 312 of 11.11.2006, p. 47
- Expenditure outside the eligible areas in European Territorial Cooperation programmes
- Article 21 of Regulation (EC) No 1080/2006

2.2. Eligible activities and costs

2.2.1 Scope of intervention and excluded activities

Within the general framework set by Regulation (EC) No 1083/2006, the range of activities eligible for co-financing from the Funds is set out in the three Fund-specific regulations. The ranges of possible activities are different for the three Funds. However, there is a degree of flexibility (up to 10% per priority axis) for funding activities normally only eligible for co-financing from ERDF or ESF from the other Fund, where the actions concerned are necessary for the satisfactory implementation of the specific operation and directly linked to it.

This limit of 10% per priority axis does not apply in certain cases for cross-border co-operation programmes under the Territorial Co-operation Objective. In these programmes, certain activities that would normally be considered of an ESF type can be financed by the ERDF without limit. The activities concerned are actions relating to the promotion of legal and administrative cooperation, integration of cross-border labour markets, local employment initiatives, gender equality and equal opportunities, training and social inclusion and sharing of human resources and facilities for R&TD. The 10% limit does, however, apply in transnational and interregional co-operation programmes and it also applies to ESF-type actions within a cross-border programme on topics other than those listed above.

The funding of certain activities is limited to particular cases and/or Member States or regions. This is the case for housing (multi-family and social housing in Member States which joined the EU in or after 2004 and in the whole eligible area of European Territorial Co-operation programmes involving at least one EU-12 Member State). Housing is not eligible for financing from the Cohesion Fund.

In ESF, certain activities are limited to regions eligible under the Convergence objective.

Certain activities subject to additional costs in the outermost regions, in particular in the transport sector, are eligible in these regions.

The decommissioning of nuclear power stations is not an eligible activity.

Finally the financing of financial engineering instruments (venture capital, loan and guarantee funds and also urban development funds) is subject to detailed conditions set out in the regulations.

References

Scope of intervention:

- for ERDF Articles 3-6 of Regulation (EC) No 1080/2006
- for ESF Article 3 of Regulation (EC) No 1081/2006
- for CF Article 2 of Regulation (EC) No 1084/2006.

Flexibility between the ERDF and ESF:

- Article 34(2) of Regulation (EC) No 1083/2006
- for European Territorial Cooperation - Article 6(1), second subparagraph, of Regulation (EC) No 1080/2006

Housing:

- Article 7(2) of Regulation (EC) No 1080/2006
- Article 47 of Regulation (EC) No 1828/2006
- Guidance note on eligibility of energy efficiency and renewable energy interventions under the ERDF and the Cohesion Fund (2007-2013) in the building sector including housing, COCOF 08/0034/02

Costs linked to handicaps in outermost regions (including transport costs):

- Article 11 of Regulation (EC) No 1080/2006)

ESF activities restricted to Convergence regions

- Article 3(2) of Regulation (EC) No 1081/2006

Decommissioning of nuclear power stations:

- Article 7(1)(c) of Regulation (EC) No 1080/2006
- Article 3(d) of Regulation (EC) No 1084/2006

Financial engineering instruments:

- Article 44 of Regulation (EC) No 1083/2006
- Articles 43-46 of Regulation (EC) No 1828/2006
- Guidance note of the Commission services on Financial Engineering in the 2007-13 programming period, COCOF/07/0018/01
- Guidance note No 2 on financial engineering, COCOF/08/0002/02

2.2.2 Eligible and excluded cost categories

A few cost categories are excluded from co-financing, namely:

- debt interest² and recoverable VAT;

² However, not interest subsidies, which are mentioned as eligible in both the ERDF (Article 3(2)(c) of Regulation EC) No 1080/2006) and ESF regulations (Article 11(1) of Regulation (EC) No 1081/2006).

- land costs exceeding 10% of the total eligible expenditure of the operation concerned, unless (for ERDF) a higher percentage can be justified for environmental conservation; and
- purchase of furniture, equipment, vehicles, infrastructure, real estate and land in ESF.

Financial charges and guarantee costs are specifically allowed as eligible for ERDF under the European Territorial Cooperation Objective.³

References:

Debt interest and VAT

- Article 7(a) and (d) of Regulation (EC) No 1080/2006
- Article 11(2)(a) and (b) of Regulation (EC) No 1081/2006
- Article 3(a) and (e) of Regulation (EC) No 1084/2006

Purchase of land and other physical assets

- Article 7(b) of Regulation (EC) No 1080/2006
- Article 3(b) of Regulation (EC) No 1084/2006
- Article 11(2)(c) of Regulation (EC) No 1081/2006

Financial charges and guarantee costs under the European Territorial Cooperation Objective:

- Article 49 of Regulation (EC) No 1828/2006.

2.3. Period of eligibility

The period during which expenditure must take place in order to be eligible for reimbursement from the Funds is between the date of submission of the operational programme to the Commission or 1 January 2007, whichever is the earlier, and 31 December 2015.

Where new types of expenditure are included when an operational programme is revised, these are eligible only from the date of the submission of the request for revision of the programme.

References:

Period of eligibility

- Article 56(1) of Regulation (EC) No 1083/2006
- Article 56(3), second subparagraph, of Regulation (EC) No 1083/2006

Major Projects

- Article 78(3) of Regulation (EC) No 1083/2006

2.4 Level or incidence of the expenditure – the “beneficiary”

³ Under the other Objectives their eligibility is subject to national rules.

Expenditure takes place at various levels or points in the financing of projects, namely at the level of the contractor or supplier, the level of the “beneficiary” and that of the managing authority.

The rules require the expenditure that is declared for reimbursement to the Commission to have taken place at the beneficiary level. “Beneficiary” is defined as “an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations.” This now also applies in the context of state aid schemes. Here the “beneficiary” is the public or private firm carrying out the individual project and receiving public aid. An operation refers to a project or group of projects.

There are a number of exceptions to the requirement for expenditure to be incurred by the beneficiary itself. First, in the European Social Fund, allowances or salaries disbursed by a third party for the benefit of the participants in an operation and certified to the beneficiary are eligible.

Secondly, two temporary exceptions are made for advances of business aid and payments to financial engineering instruments. Advances granted to the beneficiary by bodies administering state aid schemes and covering up to 35% of the total amount of the aid to be granted may be counted as expenditure for up to three years before the firm itself incurs expenditure.

For financial engineering instruments (venture capital, loan and guarantee funds and also urban development funds), the payments made in establishing or contributing to such funds may be declared as expenditure until the partial or final closure of the operational programme. At closure, only payments made by the fund for investment in firms or urban projects, funds paid out or committed as guarantees, and eligible management costs are recognized as expenditure.

References:

Level or incidence of expenditure

- Article 56(1) and 78(1) of Regulation (EC) No 1083/2006
- Article 2(4) of Regulation (EC) No 1083/2006
- Article 2(3) of Regulation (EC) No 1083/2006

Exceptions:

- Article 11(3)(a) of Regulation (EC) No 1081/2006
- Article 78(2) of Regulation (EC) No 1083/2006

Financial engineering:

- Article 78(6) of Regulation (EC) No 1083/2006
- Article 43(4) of Regulation (EC) No 1828/2006 (management costs)
 - Guidance note of the Commission services on Financial Engineering in the 2007-13 programming period, COCOF/07/0018/01
 - Guidance note No 2 on financial engineering, COCOF/08/0002/02

2.5 “Real costs” principle

Costs declared must have been actually borne by the beneficiary, i.e. there must be evidence of actual payment of the amounts claimed through receipted invoices or equivalent accounting documents. However, some costs may be claimed although their precise amount can only be estimated, namely contributions in kind, depreciation and overheads. The estimated amounts claimed must nevertheless be justified by accounting documents having a probative value equivalent to invoices.

There are special provisions for overheads (indirect costs)⁴ in the ESF and for the ERDF under the European Territorial Cooperation Objective. In European Territorial Cooperation programmes, contributions in kind also have special provisions.

In ESF indirect costs may be charged at flat rates of up to 20% of the direct costs of an operation, except within the framework of public procurement.

In the context of the restriction of eligibility to costs borne by the beneficiary, reference should also be made, without going into details, to the provisions on the deduction of revenue.

References:

Real costs

- Article 56(1) of Regulation 1083/2006
- Article 78(1) Regulation (EC) No 1083/2006

Overheads, depreciation and contributions in kind

- Article 56(2) of Regulation 1083/2006
- Article 11(3)(b) and (c) of Regulation (EC) No 1081/2006
- Articles 51, 52 and 53 of Regulation No 1828/2006
- Note on Article 11.3 (b) of Regulation (EC) 1081/2006: Indirect costs declared on a flat-rate basis for ESF grants - Programming period 2007-2013

Deduction of revenue

- Article 55 of Regulation (EC) No 1083/2006
- Guidance note on Article 55 of Regulation (EC) No 1083/2006: revenue-generating projects, COCOF/07/0074/03
- Guidance note on ESF operations generating revenues (to be finalised)

2.6. Retention of supporting documents

Supporting documents regarding expenditure and audits must be retained for three years following the closure of the operational programme or, in the event of partial closure, for three years following the year of the partial closure. However, even in the case of partial closure, information necessary for the purposes of evaluation and

⁴ The terms "overheads" and "indirect costs" are synonymous. Both denote types of costs that cannot be allocated precisely to a particular project or activity and are therefore charged to projects on a pro rata basis.

reporting must be kept for the whole of the period of three years following closure of the operational programme. Failure to retain documents for these periods may result in financial corrections being applied.

References:

Retention of supporting documents

- Article 90(1) and (2) of Regulation 1083/2006
- Article 19(3) of Regulation (EC) No 1828/2006
- Guidance note on partial closure of programmes in the 2007-2013 programming period, COCOF 08/0043/00 (to be finalised)

2.7 Other conditions of funding – publicity, durability of operations

The rules on the publicity to be given to operations co-financed by the Funds are laid down in the regulations. Breach of these conditions may also render the expenditure liable to a financial correction.

Certain naturally durable projects (infrastructure, productive activities) must be kept in operation without substantial change in their nature or implementing conditions, in such a way as to fulfil their original objectives, for at least five years after their completion. At the option of the Member State, this period may be reduced to three years for investments or jobs created by SMEs. *Pro-rata* financial corrections must be applied if these minimum periods are not observed.

References:

Publicity

- Articles 7-9 of Regulation (EC) No 1828/2006
- Guidance note to COCOF on the European transparency initiative: Implementation of the financial regulation regarding the publication of data on beneficiaries of Community funds under the shared management mode, COCOF/07/0071/03

Durability of operations:

- Article 57 of Regulation (EC) No 1083/2006
- Article 98 of Regulation (EC) No 1083/2006

2.8 Observance of other EU rules and policies

Compliance with EU rules and policies is a condition of the eligibility of expenditure for reimbursement from the Funds. The most important, but not the only, areas in practice are public procurement, state aid, environmental protection and equal opportunities.

The Commission applies a scale of financial corrections to breaches of EU public procurement rules and principles, starting at 100% for complete disregard of tendering requirements. It has recommended the Member States to apply similar

scales. As regards state aid, when the Funds co-finance aid to businesses the total public aid (national and EU) must remain within the ceiling laid down for the scheme in question.

References:

Observance of other Community rules and policies

- Article 9(2) and (5) of Regulation (EC) No 1083/2006
- Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement, COCOF 07/0037/03

3. National eligibility rules

Within the limits imposed by the EC rules summarized in section 2 above, the rules on the eligibility of expenditure must be laid down at national level. “National level” means at the appropriate level of a Member State, i.e., it need not be at central government level for the whole country but can be at regional or local level or specifically for a particular programme, provided that the rules laid down comply with all the relevant Community and national legislation.

The eligibility rules laid down at national level are just as binding as the EC rules and disregard of them has the same consequence of rendering the relevant expenditure ineligible.

Managing authorities are required to ensure that beneficiaries are informed of the specific conditions concerning the products or services to be delivered under the operation and to satisfy themselves that the beneficiary has the capacity to comply with the conditions. In particular, the managing authority must provide potential beneficiaries with clear and detailed information about the conditions of eligibility to be met in order to qualify for financing under an operational programme.

References:

Information of beneficiaries

- Article 5(2)(a) of Regulation (EC) No 1828/2006
- Article 13(1) of Regulation (EC) No 1828/2006

3.1 Geographical eligibility

All regions not declared by the Commission as eligible for the Convergence Objective are in principle eligible for the Regional Competitiveness and Employment Objective, but Member States may limit this eligibility to particular regions within their territory.

References:

- Article 6 of Regulation (EC) No 1083/2006

3.2 Scope of assistance and excluded activities

As far as eligible activities are concerned, the national authorities may select from the range of activities listed in the Fund-specific regulations those conducive to implementing their National Strategic Reference Frameworks and individual operational programmes.

The EU-15 Member States are required to target (“earmark”) certain minimum percentages of the assistance provided by the Funds (60% in the Convergence objective and 75% in the Regional Competitiveness and Employment objective) at the European Union priorities of promoting competitiveness and jobs. The Commission has recommended the EU-12 Member States to follow the same approach⁵.

The monitoring committee is required to approve the criteria for selecting the operations to be financed within the priorities of individual operational programmes.

References:

Earmarking

- Article 9(3) of Regulation (EC) No 1083/2006

Project selection criteria

- Articles 56(3) and 65(a) of Regulation (EC) No 1083/2006

3.3 Period of eligibility, level and documentation of expenditure, non-excluded or conditionally allowed cost categories

The national authorities may also limit eligibility further than the Community rules require in relation to other aspects of eligibility, for example with regard to the period during which expenditure is eligible, the eligibility of advances of state aid, the reimbursement of costs estimated in the absence of receipted invoices such as contributions in kind, depreciation and overheads, and with respect to cost categories not excluded by the Community rules or allowed by those rules subject to conditions, such as housing (see point 2.2.1 above).

Where there are specific EC rules that are limited to particular types of programmes, national authorities may decide to model their rules for other programmes on them, unless there are compelling reasons for not doing so. For example, the standards laid down for the eligibility of contributions in kind in European Territorial Cooperation programmes could be taken by national authorities as a model for applying the requirements of Article 56 of the general Regulation to such costs in mainstream programmes, too.

References:

Contributions in kind

- Article 56(2) of Regulation (EC) No 1083/2006

⁵ Information paper No 1 "Earmarking", COCOF/ 2007/0012/00, 28/02/2007.

- Article 51 of Regulation (EC) No 1828/2006

3.4 National rules under European Territorial Cooperation programmes

For programmes co-financed under the European Territorial Cooperation objective, the relevant national rules are agreed by the participating Member States, except where eligibility rules have been laid down at Community level.

References:

- Article 13, first paragraph, of Regulation (EC) No 1080/2006
- Articles 49 to 53 of Regulation (EC) No 1828/2006

3.5 Observance of other applicable national rules

Operations co-financed by the Funds must also comply with national rules implementing Community law and/or policies. Otherwise, the expenditure will be rendered wholly or partially ineligible and subject to financial corrections. Such national rules comprise, *inter alia*, public procurement legislation implementing the public procurement directives and provisions concerning public procurement below the thresholds set by the directives, and the rules of state aid schemes.

References:

- Articles 9(5) and 60(a) of Regulation (EC) No 1083/2006

ANNEX – PROVISIONS OF THE REGULATIONS FOR THE 2007-2013 PROGRAMMING PERIOD CONCERNING QUESTIONS OF ELIGIBILITY

Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

TITLE I

OBJECTIVES AND GENERAL RULES ON ASSISTANCE

CHAPTER I

Scope and definitions

Article 2

Definitions

For the purposes of this Regulation, the following terms shall have the meanings assigned to them here:

(3) ‘operation’: a project or group of projects selected by the managing authority of the operational programme concerned or under its responsibility 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;

(4) ‘beneficiary’: an operator, body or firm, whether public or private, responsible for initiating or initiating and implementing operations. In the context of aid schemes under Article 87 of the Treaty, beneficiaries are public or private firms carrying out an individual project and receiving public aid.

CHAPTER III

Geographical eligibility

Article 5

Convergence

1. The regions eligible for funding from the Structural Funds under the Convergence objective shall be regions corresponding to level 2 of the common classification of territorial units for statistics (hereinafter NUTS level 2) within the meaning of Regulation (EC) No 1059/2003 whose gross domestic product (GDP) per capita, measured in purchasing power parities and calculated on the basis of Community

figures for the period 2000 to 2002, is less than 75 % of the average GDP of the EU-25 for the same reference period.

2. The Member States eligible for funding from the Cohesion Fund shall be those whose gross national income (GNI) per capita, measured in purchasing power parities and calculated on the basis of Community figures for the period 2001 to 2003, is less than 90 % of the average GNI of the EU-25 and which have a programme for meeting the economic convergence conditions referred to in Article 104 of the Treaty.

3. Immediately following the entry into force of this Regulation, the Commission shall adopt the list of regions fulfilling the criteria under paragraph 1 and of Member States fulfilling the criteria under paragraph 2. This list shall be valid from 1 January 2007 to 31 December 2013. The eligibility of Member States for the Cohesion Fund shall be reviewed in 2010 on the basis of Community GNI figures for the EU-25.

Article 6

Regional competitiveness and employment

The regions eligible for funding from the Structural Funds under the Regional competitiveness and employment objective shall be those not covered by Article 5(1) and Article 8(1) and (2).

When presenting the national strategic reference framework referred to in Article 27, each Member State concerned shall indicate the NUTS level 1 or NUTS level 2 regions for which it will present a programme for financing by the ERDF.

Article 7

European Territorial Cooperation

1. For the purpose of cross-border cooperation, the NUTS level 3 regions of the Community along all internal and certain external land borders and all NUTS level 3 regions of the Community along maritime borders separated, as a general rule, by a maximum of 150 kilometres shall be eligible for financing taking into account potential adjustments needed to ensure the coherence and continuity of the cooperation action. Immediately following the entry into force of this Regulation, the Commission shall adopt, in accordance with the procedure referred to in Article 103(2), the list of the eligible regions. This list shall be valid from 1 January 2007 to 31 December 2013.

2. For the purpose of transnational cooperation, the Commission, in accordance with the procedure referred to in Article 103(2), shall adopt the list of the eligible transnational areas broken down by programme. This list shall be valid from 1 January 2007 to 31 December 2013.

3. For the purpose of interregional cooperation, cooperation networks and exchange of experience, the entire territory of the Community shall be eligible.

CHAPTER IV

Principles of assistance

Article 9

Complementarity, consistency, coordination and compliance

2. The Commission and the Member States shall ensure that assistance from the Funds is consistent with the activities, policies and priorities of the Community and complementary to other financial instruments of the Community. This consistency and complementarity shall be indicated in particular in Community strategic guidelines on cohesion, in the national strategic reference framework and in the operational programmes.

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

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

Each Member State concerned shall contribute to these targets. At their own initiative, Member States that acceded to the European Union on or after 1 May 2004 may decide to apply these provisions.

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the structural funds and the cohesion fund

Article 34

Specific character of the Funds

1. Operational programmes shall receive financing from only one Fund, save as otherwise provided in paragraph 3.

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

3. In the Member States receiving support from the Cohesion Fund, the ERDF and the Cohesion Fund shall jointly provide assistance for operational programmes on transport infrastructure and the environment, including for major projects.

Article 35

Geographical scope

1. Operational programmes submitted under the Convergence objective shall be drawn up at the appropriate geographical level and at least at NUTS level 2. Operational programmes submitted under the Convergence objective with a contribution from the Cohesion Fund shall be drawn up at national level.

2. Operational programmes submitted under the Regional competitiveness and employment objective shall be drawn up at NUTS level 1 or NUTS level 2, in accordance with the institutional system specific to the Member State, for regions benefiting from financing by the ERDF, save as otherwise agreed between the Commission and the Member State. They shall be drawn up by the Member State at the appropriate level if they are financed by the ESF.

3. Operational programmes submitted under the European territorial cooperation objective for cross-border cooperation shall be drawn up, as a general rule, for each border or group of borders by an appropriate grouping at NUTS level 3, including enclaves. Operational programmes submitted under the European territorial cooperation objective for transnational cooperation shall be drawn up at the level of each transnational cooperation area. Interregional cooperation and exchange of experience programmes shall relate to the whole territory of the Community.

CHAPTER II

Programming content

Section 4

Financial engineering

Article 44

Financial engineering instruments

As part of an operational programme, the Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds, and for urban development funds, that is, funds investing in public-private partnerships and other projects included in an integrated plan for sustainable urban development.

When such operations are organised through holding funds, that is, funds set up to invest in several venture capital funds, guarantee funds, loan funds and urban development funds, the Member State or the managing authority shall implement them through one or more of the following forms:

- (a) the award of a public contract in accordance with applicable public procurement law;
- (b) in other cases, where the agreement is not a public service contract within the meaning of public procurement law, the award of a grant, defined for this purpose as a direct financial contribution by way of a donation:
 - (i) to the EIB or to the EIF; or
 - (ii) to a financial institution without a call for proposal, if this is pursuant to a national law compatible with the Treaty.

The implementing rules of this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 103(3).

CHAPTER III

Eligibility of expenditure

Article 56

Eligibility of expenditure

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

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

- (a) the eligibility rules laid down under paragraph 4 provide for the eligibility of such expenditure;

(b) the amount of the expenditure is justified by accounting documents having a probative value equivalent to invoices;

(c) in the case of in-kind contributions, the co-financing from the Funds does not exceed the total eligible expenditure excluding the value of such contributions.

3. Expenditure shall be eligible for a contribution from the Funds only where incurred for operations decided on by the managing authority of the operational programme concerned or under its responsibility, in accordance with criteria fixed by the monitoring committee. New expenditure, added at the moment of the revision of an operational programme referred to in Article 33, shall be eligible from the date of the submission to the Commission of the request for revision of the operational programme.

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

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

CHAPTER IV

Durability of operations

Article 57

Durability of operations

1. The Member State or managing authority shall ensure that an operation retains the contribution from the Funds only if that operation does not, within five years from the completion of the operation or three years from the completion of the operation in Member States which have exercised the option of reducing that time limit for the maintenance of an investment or jobs created by SMEs, undergo a substantial modification:

(a) affecting its nature or its implementation conditions or giving to a firm or a public body an undue advantage; and

(b) resulting either from a change in the nature of ownership of an item of infrastructure or the cessation of a productive activity.

2. The Member State and the managing authority shall inform the Commission in the annual implementation report referred to in Article 67 of any modification referred to in paragraph 1. The Commission shall inform the other Member States.

3. Sums unduly paid shall be recovered in accordance with Articles 98 to 102.

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 Funds.

TITLE VII

FINANCIAL MANAGEMENT

CHAPTER I

Financial management

Article 78

Statement of expenditure

1. All statements of expenditure shall include, for each priority axis, the total amount of eligible expenditure, in accordance with Article 56, 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. However, as regards aid schemes within the meaning of Article 87 of the Treaty only, in addition to the conditions set out in the previous subparagraph, the public contribution corresponding to the expenditure included in a statement of expenditure shall have been paid to the beneficiaries by the body granting the aid.

2. By way of derogation from paragraph 1, as regards State aid within the meaning of Article 87 of the Treaty, the statement of expenditure may include advances paid to the beneficiaries by the body granting the aid, under the following cumulative conditions:

(a) they shall be subject to a bank guarantee or a financial public facility having an equivalent effect;

(b) they shall not exceed 35 % of the total amount of the aid to be granted to a beneficiary for a given project;

(c) they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2015, whichever is the earlier; if they are not, the next statement of expenditure shall be corrected accordingly.

3. Statements of expenditure shall identify, for each operational programme, the elements referred to in paragraph 1 relating to regions receiving transitional assistance.

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

5. Where the contribution from the Funds is calculated with reference to public expenditure as provided for in Article 53(1), any information on expenditure other than public expenditure shall not affect the amount due as calculated on the basis of the payment request.

6. By way of derogation from paragraph 1, as regards financial engineering instruments as defined in Article 44, the statement of expenditure shall include the total expenditure paid in establishing or contributing to such funds or holding funds.

However, at the partial or final closure of the operational programme, eligible expenditure shall be the total of:

(a) any payments from urban development funds for investment in public private partnerships or other projects included in an integrated plan for urban development; or

(b) any payments for investment in enterprises from each of the abovementioned funds; or

(c) any guarantees provided including amounts committed as guarantees by guarantee funds; and

(d) eligible management costs.

The co-financing rate shall be applied to the eligible expenditure paid by the beneficiary. The corresponding statement of expenditure shall be corrected accordingly.

7. Interest generated by payments from operational programmes to funds as defined in Article 44, shall be used to finance urban development projects in the case of urban development funds or financial engineering instruments for small and medium-sized enterprises in other cases. Resources returned to the operation from investments undertaken by funds as defined in Article 44 or left over after all guarantees have been honoured shall be reused by the competent authorities of the Member States concerned for the benefit of urban development projects or of small and medium-sized enterprises.

Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999

Article 7

Eligibility of expenditure

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

(a) interest on debt;

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

(c) decommissioning of nuclear power stations;

(d) recoverable value added tax.

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

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

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

(c) expenditure shall be limited to:

— multi-family housing, or

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

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

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

CHAPTER III

SPECIFIC PROVISIONS ON THE EUROPEAN TERRITORIAL COOPERATION OBJECTIVE

SECTION 2

Eligibility

Article 13

Rules on eligibility of expenditure

The relevant national rules agreed by the participating Member States in an operational programme under the European territorial cooperation objective shall apply to determine the eligibility of expenditure except where Community rules are laid down. The Commission shall lay down, in accordance with Article 56(4) of Regulation (EC) No 1083/2006 and without prejudice to Article 7 of this Regulation, common rules on the eligibility of expenditure in accordance with the procedure referred to in Article 103(3) of Regulation (EC) No 1083/2006.

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

Article 21

Special conditions governing the location of operations

1. In the context of cross-border cooperation and in duly justified cases, the ERDF may finance expenditure incurred in implementing operations or parts of operations up to a limit of 20 % of the amount of its contribution to the operational programme concerned in NUTS level 3 areas adjacent to the eligible areas for the programme referred to in Article 7(1) of Regulation (EC) No 1083/2006 or surrounded by such adjacent areas. In exceptional cases as agreed between the Commission and Member States, this flexibility may be extended to the NUTS level 2 areas in which the areas referred to in Article 7(1) of Regulation (EC) No 1083/2006 are located. At project level, expenditure incurred by partners located outside the programme area as defined in the first subparagraph may be eligible, if the project would have difficulty in achieving its objectives without that partner's participation.

2. In the context of transnational cooperation and in duly justified cases, the ERDF may finance expenditure incurred by partners located outside the area participating in operations up to a limit of 20 % of the amount of its contribution to the operational programme concerned, where such expenditure is for the benefit of the regions in the cooperation objective area.

3. In the context of cross-border, transnational and interregional cooperation, the ERDF may finance expenditure incurred in implementing operations or parts of operations on the territory of countries outside the European Community up to a limit of 10 % of the amount of its contribution to the operational programme concerned, where they are for the benefit of the regions of the Community. 4. Member States shall ensure the legality and regularity of these expenditures. The managing authority shall confirm the selection of operations outside the eligible areas as referred to under paragraphs 1, 2 and 3.

Regulation (EC) No 1081/2006 of the European Parliament and the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999

Article 11

Eligibility of expenditure

1. The ESF shall provide support towards eligible expenditure which, notwithstanding Article 53(1)(b) of Regulation (EC) No 1083/2006 may include any financial resources collectively contributed by employers and workers. The assistance shall take the form of non-reimbursable individual or global grants, reimbursable grants, loan interest rebates, micro-credits, guarantee funds and the purchase of goods and services in compliance with public procurement rules.

2. The following expenditure shall not be eligible for a contribution from the ESF:

(a) recoverable value added tax;

(b) interest on debt;

(c) purchase of furniture, equipment, vehicles, infrastructure, real estate and land.

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

(a) the allowances or salaries disbursed by a third party for the benefit of the participants in an operation and certified to the beneficiary;

(b) in the case of grants, indirect costs declared on a flat-rate basis, up to 20 % of the direct costs of an operation; (c) the depreciation costs of depreciable assets listed under paragraph 2(c), allocated exclusively for the duration of an operation, to the extent that public grants have not contributed towards the acquisition of those assets.

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

Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94

Article 3

Eligibility of expenditure

The following expenditure shall not be eligible for a contribution from the Fund:

(a) interest on debt;

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

- (c) housing;
- (d) decommissioning of nuclear power stations; and
- (e) recoverable value added tax.

Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund

CHAPTER II

PROVISIONS IMPLEMENTING REGULATION (EC) No 1083/2006

Section 1

Information and publicity

Article 5

Information measures for potential beneficiaries

2. The managing authority shall provide potential beneficiaries with clear and detailed information on at least the following:

(a) the conditions of eligibility to be met in order to qualify for financing under an operational programme ;

CHAPTER III

PROVISIONS IMPLEMENTING REGULATION (EC) No 1080/2006

Section 1

Eligibility of expenditure on housing

Article 47

Interventions in the field of housing

1. The areas selected for housing operations referred to in point (a) of Article 7(2) of Regulation (EC) No 1080/2006 shall comply with at least three of the following criteria, two of which must fall within those listed pursuant to points (a) to (h):

- (a) a high level of poverty and exclusion;
- (b) a high level of long-term unemployment;
- (c) precarious demographic trends;
- (d) a low level of education, significant skills deficiencies and high dropout rates from school;
- (e) a high level of criminality and delinquency;
- (f) a particularly rundown environment;
- (g) a low level of economic activity;
- (h) a high number of immigrants, ethnic and minority groups, or refugees;
- (i) a comparatively low level of housing value;
- (j) a low level of energy performance in buildings.

The values for the criteria set out in the first subparagraph shall be collected by each Member State concerned at national level.

The benchmarking values for each criterion shall be determined in partnership between the Commission and each Member State.

2. Only the following interventions shall be eligible pursuant to Article 7(2)(c) of Regulation (EC) No 1080/2006:

- (a) renovation of the common parts of multi-family residential buildings, as follows:
 - (i) refurbishment of the following main structural parts of the building: roof, façade, windows and doors on the façade, staircase, inside and outside corridors, entrances and their exteriors, elevator;
 - (ii) technical installations of the building;
 - (iii) energy-efficiency actions.
- (b) delivery of modern social housing of good quality through renovation and change of use of existing buildings owned by public authorities or non-profit operators.

Section 2

Rules of eligibility applicable to operational programmes for the European territorial cooperation objective

Article 48

Rules on eligibility of expenditure

Without prejudice to the list of ineligible expenditure in Article 7 of Regulation (EC) No 1080/2006, Articles 49 to 53 of this Regulation shall apply in accordance with Article 13 of Regulation (EC) No 1080/2006 to the determination of the eligibility of expenditure under operations selected as part of an operational programme under the European territorial cooperation objective.

Article 49

Financial charges and guarantee costs

The following charges and costs shall be eligible for a contribution from the ERDF:

- (a) charges for transnational financial transactions;
- (b) where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the account or accounts;
- (c) legal consultancy fees, notarial fees, costs of technical and financial experts, and accountancy and audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation or, in the case of accounting and audit costs, if they relate to requirements imposed by the managing authority;
- (d) the cost of guarantees provided by a bank or other financial institution to the extent to which the guarantees are required by national or Community legislation.

Fines, financial penalties and expenditure on legal disputes shall not be eligible.

Article 50

Expenditure by public authorities relating to the implementation of operations

1. In addition to technical assistance for the operational programme pursuant to Article 46 of Regulation (EC) No 1083/2006, the following expenditure paid by public authorities in the preparation or implementation of an operation shall be eligible:

- (a) the costs of professional services provided by a public authority other than the beneficiary in the preparation or implementation of an operation;
- (b) the costs of the provision of services relating to the preparation and implementation of an operation provided by a public authority which is itself the beneficiary and which is executing an operation for its own account without recourse to outside service-providers.

2. The public authority concerned shall either invoice the costs referred to in paragraph 1(a) to the beneficiary or certify those costs on the basis of documents of

equivalent probative value which permit the identification of real costs paid by that authority for that operation.

3. The costs referred to in paragraph 1(b) shall be eligible if they are additional costs and relate either to expenditure actually and directly paid for the co-financed operation or to in-kind contributions, as referred to in Article 51.

Those costs shall be certified by means of documents which permit the identification of real costs paid or in-kind contributions provided by the public authority concerned for that operation.

Article 51

In-kind contributions

1. In-kind contributions of a public or private beneficiary shall be eligible expenditure if they fulfil the following conditions:

(a) they consist of the provision of land or real estate, equipment or raw materials, research or professional work or unpaid voluntary work;

(b) their value can be independently assessed and audited.

2. In the case of the provision of land or real estate, the value shall be certified by an independent qualified valuer or duly authorised official body.

3. In the case of unpaid voluntary work, the value of that work shall be determined taking into account the time spent and the hourly and daily rates of remuneration for equivalent work.

Article 52

Overheads

Overheads shall be eligible provided that they are based on real costs attributable to the implementation of the operation concerned or on the average real costs attributable to operations of the same type.

Flat rates based on average costs may not exceed 25 % of those direct costs of an operation which can affect the level of overheads. The calculation of flat rates shall be properly documented and periodically reviewed.

Article 53

Depreciation

The depreciation expenditure of depreciable assets directly used for an operation, and incurred during the period of its co-financing, shall be eligible, provided that the acquisition of the assets is not declared as eligible expenditure.