

OPINION No 2/2005**on the proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund (COM(2004) 492 final of 14 July 2004)**

(presented pursuant to the second subparagraph of Article 4 of the EC Treaty)

(2005/C 121/02)

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THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 5, 10, 158 to 162, 248(4), second subparagraph, 274 and 279 thereof,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and to its implementing rules ⁽²⁾,

Having regard to the Council's request for an opinion, which reached the Court on 3 January 2005,

Having regard to the proposal for a general Regulation presented by the Commission ⁽³⁾,

Having regard to the extended impact assessment on the proposed regulatory package revising the Regulations applicable to the management of the Structural and Cohesion Funds ⁽⁴⁾,

Having regard to the Communication from the Commission to the European Parliament and to the Council on the respective responsibilities of the Member States and the Commission in the shared management of the Structural Funds and the Cohesion Fund ⁽⁵⁾,

Having regard to the Communication from the Commission to the Council and the European Parliament entitled 'Building our common future — policy challenges and budgetary means of the enlarged Union' ⁽⁶⁾,

Having regard to the Communication from the Commission to the Council and the European Parliament on the Financial Perspectives for 2007 to 2013 ⁽⁷⁾,

Having regard to the Court's Opinion No 2/2004 ⁽⁸⁾ on the 'single audit' model,

Whereas, pursuant to Article 5 of the Treaty establishing the European Community, the Community takes action in areas which do not fall within its exclusive competence only if and insofar as the objectives of the proposed action, by reason of its scale or effects, can be better achieved by the Community;

Whereas Article 274 of the Treaty establishing the European Community makes the Commission responsible for the implementation of the budget, having regard to the principles of sound financial management, and requires the Member States to cooperate with the Commission to ensure that the appropriations are used in accordance with those principles;

⁽¹⁾ OJ L 248, 16.9.2002.

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 (OJ L 357, 31.12.2002).

⁽³⁾ COM(2004) 492 final of 14 July 2004.

⁽⁴⁾ SEC(2004) 924 of 14 July 2004.

⁽⁵⁾ COM(2004) 580 final of 6 September 2004.

⁽⁶⁾ COM(2004) 101 final of 10 February 2004.

⁽⁷⁾ COM(2004) 487 final of 14 July 2004.

⁽⁸⁾ OJ C 107, 30.4.2004.

Whereas, in the sphere of the Structural Funds and the Cohesion Fund, the budget is implemented within a framework of shared management with the Member States, as required by Article 53(3) of the Financial Regulation applicable to the general budget of the European Communities; and whereas Article 54 of the Financial Regulation stipulates that the implementing tasks delegated must be clearly defined and fully supervised as to the use made of them;

Whereas the efficient and effective internal control of the budget of the European Union entails establishing clear and consistent objectives, ensuring effective coordination, producing information on costs and benefits and guaranteeing the consistent application of requirements;

Whereas the internal control systems covering European Union revenue and expenditure should provide reasonable assurance that revenue and expenditure are raised and spent in accordance with the legal provisions in force and managed so as to achieve value for money,

HAS ADOPTED THE FOLLOWING OPINION:

GENERAL OBSERVATIONS

Introduction

1. The proposal for a Regulation essentially retains the framework that was established in the previous programming periods. Besides this, it focuses on achieving greater simplification with regard to, in particular, financial instruments and the choice of themes and, more generally, implementation, management and control systems. The Court paid particular attention to the consequences of the measures proposed for financial management and control.

Responsibility for the implementation of the Community budget

2. The legal framework for the implementation of the Community budget is set by Article 274 of the EC Treaty, according to which the Commission implements the budget on its own responsibility and in cooperation with the Member States, having regard to the principle of sound financial management.

3. In the context of the various methods for implementing the Community budget, structural measures are included among 'shared management' areas, namely, areas in which 'implementation tasks shall be delegated to Member States' ⁽⁹⁾. The management and control of structural measures involve not only several Commission departments but also hundreds of national, regional and local offices and departments in the Member States. In future, these measures could account for nearly half of the appropriations in the Community budget.

⁽⁹⁾ Article 53(3) of the Financial Regulation applicable to the general budget of the European Communities.

4. The rules currently governing structural measures (Regulation No 1260/1999) already provide as follows:

- (a) that 'in application of the principle of subsidiarity, the implementation of assistance shall be the responsibility of the Member States, (...) without prejudice to the powers vested in the Commission, notable for implementing the general budget of the European Communities' (Article 8(3));
- (b) that 'without prejudice to Article 8(3), the managing authority (...) shall be responsible for the efficiency and correctness of management and implementation (...)' (Article 34(1));
- (c) that 'without prejudice to the Commission's responsibility for implementing the general budget of the European Communities, Member States shall take responsibility in the first instance for the financial control of assistance (...)' (Article 38(1)).

5. The proposal for a Regulation refers, in Article 12, to shared management within the meaning of Article 53(3) of the Financial Regulation. However, the wording of the proposal contains no reference to the Commission's final responsibility. For instance, it is specified in the last sentence of Article 12(1) that 'the Member States and the Commission shall ensure compliance with the principle of sound financial management', Article 12(2) essentially limits the Commission's responsibility for implementing the budget to checking 'the existence and proper functioning of management and control systems in the Member States (...)', and Article 69(1) makes the Member States alone responsible: 'Member States shall be responsible for ensuring sound financial management of operational programmes and the legality and regularity of underlying transactions'. What is more, it is the Member States that are assigned a general obligation to guarantee that assistance measures comply with Community law (Articles 39(f), 59(a), 60(b)(ii) and 66(2)(g)). Yet the fact that implementation tasks are entrusted to the Member States cannot limit the Commission's final responsibility. In a context where the Member States are both beneficiaries of the Community funds and responsible for the implementation of measures, only the Commission is able to ensure that the Community objectives are applied in a logical and consistent manner. It is therefore crucial that the notion of the Commission's final responsibility, as envisaged in Article 274 of the Treaty, be reaffirmed unequivocally in the articles that deal with the responsibility of Member States.

6. It is worth noting that if the Commission no longer had final responsibility for implementing the budget, the Community's financial process, and in particular the discharge procedure, would lose a good deal of its significance. The budgetary authorities' recommendations (Article 276(3) of the EC Treaty) would be deprived of all practical effect.

The proposed regulatory framework

The conditions for an adequate control framework

7. In order that the Commission can assume its ultimate responsibility for the implementation of the budget, the proposal for a Regulation should take into account the following key aspects, which underpin opinion No 2/2004 of the Court on the 'single audit' model:

(i) *The intensity of the checks*

8. There is no indication in the current legislation of the intensity of the checks at final beneficiary level, which should rely on a comparison of the costs to be borne by the Member States and the Commission in connection with the controls and the related benefits. The proposal only indirectly addresses the need to set acceptable confidence and materiality thresholds (Article 61(1)(e)(ii) and 61(1)(g)). It would be desirable to explicitly provide for appropriate criteria in the implementing rules specified in Article 58(6). The terms 'reasonable assurance' and 'validity of the application' should also be defined.

(ii) *Definition of appropriate standards*

9. The reference to 'international audit standards' (Article 61(1)(a)) is not sufficiently explicit to allow the control procedures to be based on common norms and principles. There should be provision in the implementing rules mentioned above for a preliminary acceptance procedure covering both the system's audit and the audit of the operations themselves.

(iii) *Organisation of the management and control systems*

10. Article 54 of the Financial Regulation specifies that the implementing tasks delegated must be clearly defined and fully supervised as to the use made of them. Article 35(1) of the implementing rules states that, where management is shared, the Commission will first carry out documentary and on-the-spot checks into the existence, relevance and proper operation of the procedures and systems within the entities to which it entrusts implementation. The proposal for a Regulation departs from these provisions in that, prior to the Commission's adoption of an operational programme, only the Member States are required to ensure that management and control systems have been set up (Article 70). In this context, it would be desirable to make arrangements, if not for an approval procedure, then at least for the Commission to oversee the procedures by which management and control bodies are appointed at national level. Moreover, it would also be advisable to set up an intermediary body at national level to ensure liaison with the Community authorities.

11. A substantial strengthening of Community controls is the indispensable corollary to a system in which project management rests with the national or regional autho-

rities⁽¹⁾. Given that the rules on the eligibility of expenditure will, from now on, be largely fixed at national level, the conditions outlined above will be of even greater importance.

Responsibility in the area of legality and regularity

12. Article 60(1) of the Financial Regulation makes the authorising officer responsible for ensuring the legality and regularity of expenditure. In Article 53(6), the Regulation also states that, where management is shared, the Member States are to conduct regular checks to ensure that the actions to be financed from the Community budget have been implemented correctly. They are also to take appropriate measures to prevent irregularities and fraud and if necessary bring prosecutions to recover funds wrongly paid.

13. In the light of these provisions, the proposal for a Regulation (Article 69(1)) confers upon the Member States responsibility for the legality and regularity of the underlying transactions (see paragraph 5). The ensuing transfer of competence to the Member States also comes as a corollary to the stipulation in Article 70 that they are to approve the management and control systems.

14. It is true that, where there are doubts as to the operation of these systems, or where irregularities are suspected or confirmed, the Commission could interrupt payment for a period of six to twelve months (Article 89). It is also envisaged that the Member States and the Commission could adopt financial corrections (Articles 99 and 100). However, such measures could provide no more than a limited, auxiliary contribution to the necessary rigour of everyday management. Their effectiveness is essentially dependent on the number of checks performed. Furthermore, since financial corrections would intervene only after the fact, they could not be enough on their own to make good all the consequences of any transactions that might be implemented even though they did not meet the necessary regulatory requirements.

Responsibility in the area of sound financial management

15. Article 60(1) of the Financial Regulation indicates that the authorising officer is to implement expenditure in accordance with the principles of sound financial management. Article 27 of the Regulation sets out the conditions for the use of Community appropriations in accordance with the principles of economy, efficiency and effectiveness. The same Article states that specific, measurable, achievable, relevant and timed objectives are to be set for all budget activities. The Commission is to undertake *ex ante* and *ex post* evaluations which it then forwards to the spending, legislative and budgetary authorities.

⁽¹⁾ See Opinion No 10/98 on certain proposals for regulation within the Agenda 2000 framework (Structural Funds, point 6.3) (OJ C 401, 22.12.1998).

16. The proposal for a Regulation makes the Member States responsible for sound financial management (Article 69). However, this provision does no more than refer to the existence of 'adequate guidance' on setting up management and control systems that will ensure that community financing is used 'efficiently and correctly'. On the matter of effectiveness⁽²⁾, the proposal refers almost exclusively to the management and control systems, and by implication to those governing only legality and regularity. Article 59 of the proposal is limited to making the managing authority responsible for managing and implementing programmes 'efficiently, effectively and correctly' and finally refers, in indent (e), to the quality standards agreed between the Commission and the Member States in respect of *ex ante* evaluations.

17. Concerning the narrower question of evaluations, the proposal for a Regulation specifies that the evaluation methods and standards to be applied (Article 45(5)) are to be agreed between the Commission and the Member States (Article 59(e)). The quality of these standards will be of particular importance for the *ex ante* evaluations entrusted to the Member States (Articles 46(2) and 46(3)), which must *inter alia* identify the added value that operational programmes bring to the Community.

18. It is therefore particularly important that the implementing rules that the Commission is to adopt pursuant to Article 58(6) of the proposal for a Regulation provide all the necessary clarification of these aspects.

Conservation of supporting documents

19. Article 88 of the proposal for a Regulation says that supporting documents concerning expenditure are to be kept available for the Commission and the Court of Auditors for a period of at least three years following closure. In the case of co-financed assistance, where the eligibility of the expenditure is largely dependent on national legislation, it would be desirable to state explicitly that the three-year term is without prejudice to national rules specifying longer periods.

20. These remarks apply also to the partial closure of operational programmes (Article 97). In this specific case by derogation from the general rule (Article 88), the period for conserving supporting documents would start on the date of partial closure (Article 98(2)). This would have the effect of seriously limiting checks on an operational programme as a whole at the end of the programming period, since the supporting documents for operations closed earlier might no longer be available. In the Court's view, such an eventuality could encroach upon its audit prerogatives as specified in Article 248 of the EC Treaty.

More effective programmes

Programming and setting objectives

21. The proposal stipulates that each Member State is to draw up a 'national strategic reference framework' that is consistent with the 'Community guidelines on economic, social and

⁽²⁾ For example Articles 57(d), (f) and (h), 61(1)(a), 70(1), 71(2) and 72(2).

territorial cohesion' to be adopted by the Council (Article 23). However, there is no reference under the 'national strategic reference framework' to the 'European territorial cooperation' objective.

22. The content of the 'national strategic reference framework' (Article 25) is not sufficiently precise (in terms of measures, the allocation of resources and expected results) to provide detailed information on the national and regional development strategy. Neither are the 'thematic and territorial priorities', which are supposed to define the measures to be financed, explained adequately. This framework is also likely to be limited exclusively to areas where assistance is co-financed. Thus the Commission, which is required to adopt the frameworks, would not be in a position to emphasise some or other aspect in the operational programmes.

23. The operational programmes are also characterised by a lack of precision, no information being requested in respect of the various measures to achieve the priority objectives. This prevents any arbitration between measures. Specific objectives would be quantified by means of a limited number of implementation, results and impact indicators. Compared with the current legislation, a description of the arrangements for managing each operational programme is no longer required (Article 36). Thus, neither the 'national strategic reference framework', nor the operational programmes would be true management and monitoring instruments for the Commission. It is consequently unclear how the Commission will be able to ensure that coordination with the operational programmes has been established at national level.

Improved integration of assistance measures

24. The extended impact assessment fails to address the reasons for maintaining separate Funds (as opposed to grouping the Funds as postulated in Article 161 of the EC Treaty). However, this should have been the subject of a thorough analysis from the point of view of the advantages and disadvantages of all the available options, given that the extended impact assessment gives arguments in favour of setting up a single Fund. As regards the present Objective 2, in fact, it says that the relative thematic diversity of funded projects and the fragmentation caused by zoning have blocked the implementation of suitable policies. Moreover, it has not been possible to exploit sufficiently the ERDF/ESF synergies under Objective 3. It is therefore concluded that there is a need for:

- a greater concentration of themes to promote competitiveness,
- greater complementarity, over and above the 'Convergence' objective, between the ERDF and the ESF.

25. Establishing the principle of 'one Fund/one operational programme', in the interest of simplification is not likely to promote the search for the necessary synergies.

26. It is especially difficult to justify the separation between the ERDF and the Cohesion Fund in the context of the 'Convergence' objective. These two Funds are generally to be found in the same operational programmes and are concerned with the same themes (transport infrastructure and environmental projects/actions). The corresponding actions/projects are often complementary (for example, where the Cohesion Fund and the ERDF are both used to finance different parts of a motorway). What distinguishes them are regional/State eligibility (*per capita* GDP of less than 75 % of the Community average in the case of the Structural Funds, and *per capita* GNI of less than 90 % of the

Community average), the contribution ceiling, Article 51 gives 85 % for the Cohesion Fund and 75 % for the ERDF, although the ERDF ceiling may be increased to 85 % in certain cases (Articles 51(4) and 52(1)), and the matter of pre-financing (Article 81), which amounts to 7 % for the Structural Funds and 10,5 % for the Cohesion Fund. ERDF actions and Cohesion Fund projects are often managed by the same public entities. The concepts of major projects and revenue-generating projects are equally valid for both Funds. For reasons of consistency it would be appropriate to operate a single Fund, at least in the case of the ERDF and the Cohesion Fund, since the differences given above do not constitute major obstacles.

27. Looking at Article 3(2) of the proposal, it is difficult to draw a clear line between actions concerned by indent (a) and those concerned by indent (b). The real difference appears to be 'territorial' (eligible areas) as compared with 'financial' (contribution levels).

28. From a practical point of view, the provision of Article 33 (financing from a single Fund, with no more than 5 % from any other Fund) is a further complication arising from the existence of multiple Funds.

Adequacy of the Commission's administrative capacity

29. In the past, the Court has noted ⁽¹⁾ several delays during the different stages of programming or during the performance of checks for which the responsibility must lie with Commission departments. It is therefore vital that administrative structures and adequate procedures be established. Moreover, precise deadlines should be laid down in several of the provisions proposed (Articles 31(5), 32(2), 40(3), 85(2) and 96(1)). It would also be useful to have the departments responsible for the different Funds reach a common accord on the audit strategy, the allocation of resources and the required level of assurance.

SPECIFIC OBSERVATIONS

30. The Court sets out specific observations in the table below. In this section the imprecision of certain time limits and certain expressions used is noted on several occasions. This runs the risk of giving rise to differing interpretations and undermining the legal scope of the provisions concerned.

⁽¹⁾ See for example Special Report No 10/2001 (OJ C 314, 8.11.2001), concerning the financial control of the Structural Funds and Special Report No 7/2003 (OJ C 174, 23.7.2004), on the implementation of assistance programming for the period 2000 to 2006 within the framework of the Structural Funds.

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 3.1</i></p> <p>1. The action taken by the Community under Article 158 of the Treaty shall be designed to strengthen the economic and social cohesion of the enlarged Community in order to promote the harmonious, balanced and sustainable development of the Community. This action shall be taken with the aid of the Funds, the European Investment Bank (EIB) and other existing financial instruments. It shall be aimed at meeting the challenges linked to the economic, social and territorial disparities which have arisen particularly in countries and regions whose development is lagging behind, to the speeding-up of economic and social restructuring, and to the ageing of the population. The action taken under the Funds shall incorporate, at national and regional level, the Community's priorities in favour of sustainable development by strengthening growth, competitiveness and employment, social inclusion, as well as the protection and quality of the environment.</p>	<p>The reference to action taken under Article 158 of the EC Treaty is incomplete in that it omits rural development. However, it is stated in Article 3(3) that assistance under the Funds is to support, in an appropriate manner, the renewal of rural areas and areas dependent on fisheries through economic diversification, as well as mountain areas.</p>
<p><i>Article 3.2</i></p> <p>2. To that end, the ERDF, the ESF, the Cohesion Fund, the European Investment Bank (EIB) and the other existing Community financial instruments shall each contribute in an appropriate way towards achieving the following three objectives:</p> <p>(a) the 'Convergence' objective shall be aimed at speeding up the convergence of the least-developed Member States and regions by improving conditions for growth and employment through increasing and improving the quality of investment in physical and human capital, the development of innovation and of the knowledge society, the adaptability to economic and social changes, the protection and improvement of the environment as well as administrative efficiency. This objective shall constitute the priority of the Funds;</p> <p>(...)</p>	<p>The proposal includes 'administrative efficiency' among the actions to be financed under the 'Convergence' objective. The concept of 'administrative efficiency', which also appears in Articles 25(3)(b) and 26(3)(c), needs to be clarified, especially since the proposal also uses the term 'administrative capacity' (Article 44(1)).</p>
<p><i>Articles 5.1 and 5.2</i></p> <p>1. The regions eligible for funding from the Structural Funds under the 'Convergence' objective shall be regions corresponding to level II of the Nomenclature of Territorial Statistical Units (hereinafter NUTS level II) within the meaning of Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 whose per capita Gross Domestic Product (GDP), measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on (...), is less than 75 % of the Community average.</p> <p>2. The NUTS level II regions whose per capita GDP, measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on (...), is between 75 % and (...) % of the Community average shall be eligible, on a transitional and specific basis, for financing by the Structural Funds</p>	<p>It is not enough to use GDP alone to identify eligible regions because of the many dimensions of the development gap. Aspects that should not be overlooked include the availability of basic infrastructure, the unemployment rate, labour productivity, the economic structure, education and training, the quality of the environment, emigration and R & D.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 5.2</i></p> <p>2. The NUTS level II regions whose per capita GDP, measured in purchasing power parities and calculated on the basis of Community figures for the last three years available on (...), is between 75 % and (...) % of the Community average shall be eligible, on a transitional and specific basis, for financing by the Structural Funds.</p>	<p>The second percentage referring to the Community average needs to be inserted.</p>
<p><i>Article 6.1</i></p> <p>1. The areas eligible for funding from the Structural Funds under the 'Regional competitiveness and employment' objective shall be those not covered by Article 5(1) and 5(2). When presenting the national strategic reference framework referred to in Article 25, each Member State concerned shall indicate the NUTS I or NUTS II regions for which it will present a programme for financing by the ERDF.</p>	<p>It should be pointed out that the geographical scope of the 'Regional competitiveness and employment' objective is potentially very broad and therefore all-embracing. Eligibility criteria need to be defined for this objective.</p>
<p><i>Articles 7.1 and 7.2</i></p> <p>1. For the purpose of cross-border cooperation, shall be eligible for financing the NUTS level III regions of the Community along the internal and certain external land borders and certain NUTS level III regions of the Community along the maritime borders separated, as a general rule, by a maximum of 150 kilometres, 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 104(2) the list of the eligible regions. This list shall be valid from 1 January 2007 to 31 December 2013.</p> <p>2. For the purpose of transnational cooperation, on the basis of the Community's strategic guidelines referred to in Articles 23 and 24, the Commission in accordance with the procedure referred to in Article 104(2), shall adopt the list of the eligible transnational areas. This list shall be valid from 1 January 2007 to 31 December 2013.</p>	<p>The description of the 'European territorial cooperation' objective should have been preceded by an analysis of the situation in these areas and a clear definition of their needs with a view to concentrating activities. The provisions on the choice of eligible areas should be expanded to include criteria that are precisely defined and, more particularly, weighted.</p>
<p><i>Article 10.3</i></p> <p>3. Each year the Commission shall consult the organisations representing the social partners at European level on assistance from the Funds.</p>	<p>Article 10(1)(b) refers to the economic and social partners. It would be desirable to use the same expression in paragraph 3.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 13</i></p> <p>1. Contributions from the Structural Funds shall not replace public or equivalent structural expenditure by a Member State.</p> <p>2. For regions covered by the 'Convergence' objective, the Commission and the Member State shall determine the level of public or equivalent structural expenditure which the Member State shall maintain in all the regions concerned during the programming period. That expenditure shall be agreed by the Member State and the Commission within the national strategic reference framework referred to in Article 25.</p> <p>3. The level of the expenditure referred to in paragraph 2 shall be at least equal to the amount of average annual expenditure in real terms attained during the previous programming period. The level of expenditure shall be determined with reference to the general macroeconomic conditions in which the financing is carried out and taking into account certain specific economic situations, namely privatisations as well as an exceptional level of public or equivalent structural expenditure by the Member State during the previous programming period.</p> <p>4. The Commission shall, in cooperation with each Member State, verify additionality mid-term in 2011 and <i>ex post</i> by 30 June 2016 for the 'Convergence' objective. Where a Member State is unable to prove on 30 June 2016 that the additionality agreed within the national strategic reference framework has been respected, the Commission shall proceed to a financial correction in accordance with procedure laid down in Article 101.</p>	<p>A procedure verifying the application of the additionality principle is only envisaged for the 'Convergence' objective. There is no such provision for the other two objectives, which account for around 20 % of appropriations. Only section 5.3 of the explanatory memorandum specifies that this control is to be exercised by the Member States in accordance with the proportionality principle. Neither does the Commission have to be informed of the results of controls by the Member States. This represents a change compared with the current legislation (Article 11(3) of Regulation No 1260/99).</p>
<p><i>Article 13.3</i></p> <p>3. The level of the expenditure referred to in paragraph 2 shall be at least equal to the amount of average annual expenditure in real terms attained during the previous programming period.</p> <p>The level of expenditure shall be determined with reference to the general macroeconomic conditions in which the financing is carried out and taking into account certain specific economic situations, namely privatisations as well as an exceptional level of public or equivalent structural expenditure by the Member State during the previous programming period.</p>	<p>The possibility of taking account of the general macroeconomic circumstances as well as certain specific economic situations, without further explanation, potentially leaves enormous scope for discretion.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 16.1</i></p> <p>1. Overall resources for the 'Convergence' objective shall amount to 78,54 % of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 264,0 billion) and shall be distributed between the different components as follows:</p> <p>(a) 67,34 % for the financing referred to in Article 5(1), using eligible population, regional prosperity, national prosperity and unemployment as the criteria for calculating the indicative breakdowns by Member State;</p> <p>(b) 8,38 % for the transitional and specific support referred to in Article 5(2), using eligible population, regional prosperity, national prosperity and unemployment as criteria for calculating the indicative breakdowns by Member State;</p> <p>(c) 23,86 % for the financing referred to in Article 5(3), using population, per capita GNI taking into account of the improvement in national prosperity over the previous period, and surface area as criteria for calculating the indicative breakdowns by Member State; and</p> <p>(d) 0,42 % for the financing referred to in Article 5(4), using eligible population as criteria for calculating the indicative breakdowns by Member State.</p>	<p>It would be helpful to indicate how the criteria were weighted to determine the allocation of Funds to the different components.</p>
<p><i>Article 16.2</i></p> <p>2. The annual breakdown of the appropriations referred to in paragraph 1(b) shall be degressive from 1 January 2007. The appropriation in 2007 shall be lower than in 2006, except for those regions that are not fully eligible to Objective 1 on 1 January 2000 pursuant to Regulation (EC) No 1260/1999 for which the appropriation in 2007 shall be objective and fair.</p>	<p>The text does not define what is meant by 'objective and fair'.</p>
<p><i>Article 17.1</i></p> <p>1. Overall resources for the 'Regional competitiveness and employment' objective shall amount to 17,22 % of the resources referred to in the first paragraph of Article 15 (i.e. a total of EUR 57,9 billion) and shall be distributed between the different components as follows:</p> <p>(a) 83,44 % for the financing as referred to in Article 6(1), using eligible population, regional prosperity, unemployment, employment rate and population density as the criteria for calculating the indicative breakdowns by Member State; and</p> <p>(b) 16,56 % for the transitional and specific support referred to in Article 6(2), using eligible population, regional prosperity, national prosperity and unemployment as the criteria for calculating the indicative breakdowns by Member State.</p>	<p>It would be helpful to indicate how the criteria were weighted to determine the allocation of Funds to the different components.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 17.2</i></p> <p>2. The appropriations referred to in paragraph 1(a) shall be divided equally between the programmes financed by the ERDF and the programmes financed by the ESF. 2.</p>	<p>The text should clarify how the division between the ERDF and the ESF is to be made.</p>
<p><i>Article 17.4</i></p> <p>4. The annual breakdowns of the appropriations referred to in paragraph 1(b) shall be degressive from 1 January 2007. The appropriations in 2007 shall be lower than in 2006, except for those regions whose eligibility to Objective 1 pursuant to Regulation (EC) No 1260/1999 started in 2004 for which the appropriation in 2007 shall be objective and fair.</p>	<p>The text does not define what is meant by 'objective and fair'.</p>
<p><i>Article 22</i></p> <p>The Commission ensures that total annual allocations from the Funds for any Member State pursuant to this Regulation, including the contribution of the ERDF to the financing of the cross-border strand of the European Neighbourhood and Partnership Instrument pursuant to Regulation (EC) No (...) and of the Instrument for pre-accession pursuant to Regulation (EC) No (...), and from the part of the European Agricultural Fund for Rural Development (EAFRD) pursuant to Regulation (EC) No (...) originating from the EAGGF, Guidance section, and of the European Fund for Fisheries (EFF) pursuant to Regulation (EC) No (...) contributing to the 'Convergence' objective, shall not exceed 4 % of that Member State's GDP as estimated at the time of the adoption of the Interinstitutional Agreement.</p> <p>The Regulations of the financial instruments mentioned in the previous paragraph other than the Funds include a similar provision.</p>	<p>Concerning the total annual allocations from the Funds for any Member State, the idea put forward in recital 30 of the preamble, namely, that annual appropriations should be allocated with regard to the Member States' capacity for absorption, has not been taken up.</p>
<p><i>Article 24</i></p> <p>At the latest three months after the adoption of this Regulation, the Community strategic guidelines referred to in Article 23 are adopted in accordance with the procedure laid down in Article 161 of the Treaty. This decision shall be published in the <i>Official Journal of the European Union</i>. The Community strategic guidelines shall be subject, if necessary, to mid-term review in accordance with the procedure laid down in Article 161 of the Treaty, in order to take account in particular of changes in the priorities of the Community.</p>	<p>It is also necessary to question the effects on the frameworks of any amendment to the Community strategic guidelines. There is in fact no provision for a revision of the frameworks in any of the articles.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 25.3</i></p> <p>3. The strategic section of the national strategic reference framework shall specify the strategy chosen for the 'Convergence' objective and the 'Regional competitiveness and employment' objective, demonstrating how the choices made are consistent with the Community strategic guidelines on the basis of an analysis of development disparities, weaknesses and potential related, in particular, to the expected changes in the European and world economies. It shall specify:</p> <p>(...)</p> <p>(b) for the 'Convergence' objective only, the action envisaged for reinforcing the Member State's administrative efficiency, including as regards management of the Funds, and the evaluation plan referred to in Article 46(1);</p> <p>(...)</p>	<p>It is stated here that the chosen strategy is to specify 'the action envisaged for reinforcing the Member State's administrative efficiency, including as regards management of the Funds'. This implies that the notion of 'reinforcing the Member State's administrative efficiency' could go beyond the management of the Funds, bringing with it the risk that a very wide range of operations would be financed.</p>
<p><i>Article 25.3</i></p> <p>3. The strategic section of the national strategic reference framework shall specify the strategy chosen for the 'Convergence' objective and the 'Regional competitiveness and employment' objective, demonstrating how the choices made are consistent with the Community strategic guidelines on the basis of an analysis of development disparities, weaknesses and potential related, in particular, to the expected changes in the European and world economies. It shall specify:</p> <p>(...)</p> <p>In order to permit monitoring, the main goals of the priorities referred to in point a) shall be quantified and a limited number of performance and impact indicators shall be identified.</p>	<p>It is inappropriate to specify 'a limited number' without giving further detail. What matters most is that the chosen indicators should enable the results achieved, and the impact of those results, to be adequately expressed.</p>
<p><i>Article 25.4</i></p> <p>4. For the 'Convergence' objective and the 'Regional competitiveness and employment' objective, the operational section shall contain:</p> <p>(a) the list of operational programmes and the indicative annual allocation from each Fund by programme, ensuring an appropriate balance between regional and thematic action. This list shall include the amount of the national contingency reserve referred to in Article 49;</p> <p>(...)</p>	<p>What is meant by 'an appropriate balance' is not defined.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 26.2</i></p> <p>2. Each Member State shall send the Commission a proposal for a national strategic reference framework as soon as possible after adoption of the Community strategic guidelines. Member States may decide to present at the same time the operational programmes referred to in Article 31. The Commission negotiates this proposal in the framework of the partnership.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline.</p>
<p><i>Article 30</i></p> <p>The report of the Commission referred to in Article 159, second subparagraph, of the Treaty shall include in particular:</p> <p>(a) a record of the progress made on economic and social cohesion, including the socio-economic situation and development of the regions, as well as the integration of the Community priorities;</p> <p>(b) a record of the role of the Funds, the EIB and the other financial instruments, as well as the effect of other Community and national policies on the progress made. The report shall contain, if necessary, any proposals on Community measures and policies which should be adopted in order to strengthen economic and social cohesion. It shall also propose, if necessary, proposals concerning any adjustments linked to new Community policy initiatives in the strategic guidelines on cohesion. In the year in which the report is presented, it shall replace the annual report by the Commission referred to in Article 28. It shall be the subject of an annual debate in accordance with the procedure laid down in Article 29.</p>	<p>It would be advisable to stipulate that the cohesion report should also address the territorial dimension of cohesion.</p>
<p><i>Article 31.3</i></p> <p>3. The Member State shall submit a proposal for an operational programme to the Commission containing all the components referred to in Article 36, as soon as possible following the Commission decision referred to in Article 26 or at the same of the presentation of the national strategic reference framework referred to in the same Article 26.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline.</p>
<p><i>Article 31.5</i></p> <p>5. The Commission shall adopt each operational programme as soon as possible after its formal submission by the Member State.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline (the deadline is currently five months).</p>
<p><i>Article 32.2</i></p> <p>The Commission shall adopt a decision on the requests for revision of operational programmes as soon as possible after formal submission of the request by the Member State.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 35.4</i></p> <p>4. The Commission may, if it considers it appropriate for the appraisal of major projects, request the EIB to examine those projects' technical quality and economic and financial viability, in particular as regards the financial engineering instruments to be implemented or developed.</p>	<p>The fourth paragraph is different in nature from the other three and would surely be more appropriate as part of Article 40.</p>
<p><i>Article 36.1</i></p> <p>1. Operational programmes relating to the 'Convergence' and the 'Regional competitiveness and employment' objectives shall contain:</p> <p>(...)</p> <p>(c) an information on the priorities and their specific targets. Those targets shall be quantified using a limited number of indicators for implementation, results and impact, taking into account the proportionality principle. The indicators must make it possible to measure the progress in relation to the baseline situation and the effectiveness of the targets implementing the priorities;</p> <p>(...)</p>	<p>What is meant by 'a limited number of indicators ..., taking into account the proportionality principle' should be clarified.</p>
<p><i>Article 36.4</i></p> <p>4. Operational programmes financed by the ERDF shall contain in addition for the 'Convergence' and the 'Regional competitiveness and employment' objective:</p> <p>(a) actions for inter-regional cooperation with, at least, one region of another Member State in each regional programme;</p> <p>(...)</p>	<p>The actions concerned correspond more closely to the 'European territorial cooperation' objective.</p>
<p><i>Article 40.3</i></p> <p>3. The Commission shall adopt a decision as soon as possible after the submission by the Member State or the managing authority of all the information referred to in Article 39. That decision shall define the physical object, the amount to which the co-financing rate for the priority applies, and the annual schedule.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 45.3</i></p> <p>3. The evaluation activities referred to in paragraph 1 shall be organised under the responsibility of the Member State or the Commission, as appropriate, in accordance with the principle of proportionality and on the basis of a partnership between the Member State and the Commission. Evaluations shall be carried out by independent assessors. The results shall be published, except where the authority responsible for the evaluation expressly objects in accordance with Regulation (EC) No 1049/2001 on access to documents.</p>	<p>The 'principle of proportionality' is not defined.</p>
<p><i>Article 46.5</i></p> <p>5. During the programming period, Member States carry out ad hoc evaluation linked to the monitoring of operational programmes where the monitoring of programmes reveals a significant departure from the goals initially set and where proposals are made for the revision of operational programmes. The results shall be sent to the monitoring committee for the operational programme and to the Commission.</p>	<p>The text does not define what is meant by 'a significant departure from the goals initially set' and 'the revision of operational programmes'.</p> <p>This observation only refers to the French version of the proposal. The adjective 'substantiel' does not appear in all languages.</p>
<p><i>Article 48</i></p> <p>1. Within the context of the annual debate referred to in Article 29, the Council shall in 2011, in accordance with the procedure laid down in Article 161 of the Treaty, allocate the reserve referred to in Article 20 among the Member States to reward progress made as compared with the initial situation:</p> <p>(a) for the 'Convergence' objective, on the basis of the following criteria:</p> <ul style="list-style-type: none"> (i) growth in the per capita gross domestic product measured at NUTS II level, in relation to the Community average, on the basis of the data available for the 2004 to 2010 period; (ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004 to 2010 period; <p>(b) for the 'Regional competitiveness and employment' objective, on the basis of the following criteria:</p> <ul style="list-style-type: none"> (i) pro rata to those regions having spent between 2007 and 2010 at least 50 % of their ERDF allocation on innovation-related activities as referred to in Article 5(1) of Regulation (EC) No (...); (ii) growth in the employment rate at NUTS II level, on the basis of the data available for the 2004 to 2010 period. <p>2. Each Member State shall allocate the amounts concerned among operational programmes taking into account the criteria referred to in the previous paragraph 1.</p>	<p>Use of the performance reserve will essentially depend on criteria for which it is extremely difficult to establish a direct link with the actions benefiting from Community assistance. Changes in GDP and the employment rate are dependent on factors that are far more complex than the operational programmes alone, whose financial impact, moreover, is generally more limited than that of public investment as a whole. Furthermore, it appears restrictive to consider only the upward movement of indicators, as the structural measures may well have contributed towards cushioning a fall.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 50</i></p> <p>The contribution of the Funds shall be modulated in the light of the following:</p> <p>(a) the gravity of the specific problems, in particular of an economic, social or territorial nature;</p> <p>(b) the importance of each priority for the Community's priorities as set out in the strategic guidelines of the Community;</p> <p>(c) protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action, and the polluter-pays principle;</p> <p>(d) the rate of mobilisation of private financing, in particular under public-private partnerships, in the fields concerned.</p>	<p>The text should give weightings for the criteria to be applied for modulations of the contribution rates.</p>
<p><i>Article 54.2</i></p> <p>2. Public expenditure on revenue-generating projects shall be calculated on the basis of the investment cost less the current value of the net revenue from the investment over a specific reference period. The calculation shall take account of the profitability normally expected of the category of investment concerned and of the application of the polluter-pays principle, and, if necessary, of the principle of equity linked to the relative prosperity of the Member State concerned.</p>	<p>The criteria used to apply the 'polluter pays' principle and the principle of equity linked to the Member States' relative prosperity are not defined. The Commission should provide methodological support for the setting of assistance levels for these projects (see Article 40(2)).</p>
<p><i>Article 55.1</i></p> <p>1. Expenditure shall be eligible for a contribution from the Funds if it has actually been incurred by the beneficiary for carrying out an operation between 1 January 2007 and 31 December 2015. Operations co-financed must not have been completed before the starting date for eligibility. Expenditure on major projects shall be eligible from the date of submission of the project to the Commission.</p>	<p>It might be beneficial to relax these conditions to take account of preparatory work on the actions to be financed. The eligibility period could thus start on 1 July 2006.</p>
<p><i>Article 55.3</i></p> <p>3. The rules on the eligibility of expenditure shall be laid down at national level subject to the exception provided in the specific Regulations for each Fund. They cover the entirety of the public expenditure declared under the operational programme.</p>	<p>It will be difficult to apply national eligibility rules in the context of the 'European territorial cooperation' objective, as the operations financed concern more than one Member State. This aspect is not taken into account.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 57.1</i></p> <p>1. The management and control systems of operational programmes set up by Member States shall provide for:</p> <p>(a) a clear definition of the functions of the bodies concerned in management and control and a clear allocation of functions within each body;</p> <p>(b) a clear separation of functions between bodies concerned in management, certification of expenditure and control and between those functions within each body;</p> <p>(c) adequate resources for each body to carry out the functions allocated to it;</p> <p>(d) effective internal audit arrangements;</p> <p>(e) reliable accounting, monitoring and financial reporting systems in computerised form;</p> <p>(f) an effective system of reporting and monitoring where the performance of tasks is delegated;</p> <p>(g) the existence of manuals of procedures for the functions to be performed;</p> <p>(h) effective arrangements for auditing the proper operation of the system;</p> <p>(i) systems and procedures to ensure an adequate audit trail;</p> <p>(j) reporting and monitoring procedures of irregularities and of recovery of amounts unduly paid.</p>	<p>Subparagraph (j) refers to 'irregularities'. A precise definition would be useful, especially since this notion appears in a number of clauses (for example, Articles 69(3), 73(4), 89(1) and 99). The value of this provision is limited at present by the lack of clarity concerning the data to be submitted.</p>
<p><i>Article 57.2</i></p> <p>2. The measures laid down in paragraph 1 (b), (c), (d), (f), and (h) shall be proportionate to public expenditure under the operational programme concerned.</p>	<p>It is envisaged that a number of the measures set out in this article would be applied in proportion to public expenditure under the operational programme concerned. However, this notion is insufficiently clear for the measures to be applied with any consistency. For this reason, it is difficult to imagine applying the measures in question (separation of functions, adequate resources and arrangements for internal audit, reporting and the systems audit) in a proportionate way. Moreover, this derogation does not apply to manuals of procedure, and no definition is given. It should also be specified whether the proportionality principle is supposed to apply to Articles 13 (verification of the additionality principle exclusively in the case of the 'Convergence' objective), 46(3) (overall or specific <i>ex ante</i> evaluation), 66(2) (content of the annual and final implementation reports) and 73 (control procedures).</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 61.1</i></p> <p>1. The Audit Authority of an operational programme shall be responsible in particular for:</p> <p>(...)</p> <p>(b) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditure declared;</p> <p>(...)</p>	<p>The notion of an 'appropriate sample' should be defined in the implementing rules. In any case, the requirements should not be less rigorous than for the 2000 to 2006 period.</p>
<p><i>Article 61.1</i></p> <p>1. The Audit Authority of an operational programme shall be responsible in particular for:</p> <p>(...)</p> <p>(c) presenting to the Commission, within six months of the approval of the operational programme, an audit strategy covering the bodies which will perform the audits referred to under subparagraphs (a) and (b), the method to be used, the sampling method for audits on operations and the indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period;</p> <p>(...)</p>	<p>This clause refers to ensuring that the 'main bodies' are audited, yet without defining what those bodies are.</p>
<p><i>Article 61.1</i></p> <p>1. The Audit Authority of an operational programme shall be responsible in particular for:</p> <p>(...)</p> <p>(e) by 30 June each year from 2008 to 2016:</p> <p>(i) establishing an annual control report setting out the findings of the audits carried out in accordance with the audit strategy in respect of the operational programme during the previous year and reporting any shortcomings found in the systems for the management and control of the programme. The information concerning years the 2014 and 2015 may be included in the final report to accompany the declaration of validity;</p> <p>(ii) issuing an opinion as to whether the management and control system has operated effectively to give a reasonable assurance on the correctness of the statements of expenditure presented to the Commission during that year and the legality and regularity of the underlying transactions;</p> <p>(...)</p>	<p>The Commission's assurance concerning the audit of operational programmes is largely dependent upon the audit authority's submission of an annual control report accompanied by an opinion. However, owing to the deadline for submitting these documents (30 June), it will not be possible to take them into consideration either in the annual declarations to be drawn up by the Directors-General or in the statements of assurance prepared by the Court of Auditors. The same applies, <i>mutatis mutandis</i>, to the annual report that is the subject of Article 66.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 63.2</i></p> <p>2. At its own initiative, a representative of the Commission may participate in the work of the monitoring committee in an advisory capacity. A representative of the EIB and the EIF may participate in an advisory capacity for those operational programmes to which it makes a contribution.</p>	<p>In contrast with the current rules (see Article 35(2) of Regulation No 1260/1999), the Commission would participate in the monitoring committees at its own initiative. However, participation on these terms does appear desirable as a means of facilitating the exchange of information and the timely adoption of suitable measures.</p>
<p><i>Article 65</i></p> <p>1. The Managing Authority and the Monitoring Committee shall ensure the quality of the implementation of the operational programme.</p> <p>2. The Managing Authority and the Monitoring Committee shall carry out monitoring by reference to financial indicators and indicators of implementation, results and impact specified in the operational programme. Where the nature of the assistance permits, the statistics shall be broken down by sex and by the size of the recipient undertakings.</p> <p>3. The Commission, in partnership with the Member States, shall examine the indicators necessary for monitoring and evaluating the operational programme.</p>	<p>It should be stated as a principle that all co-financed projects will carry implementation objectives and be subject to the evaluation of results specified in Article 65. Priority-based management is all too likely to produce only general information.</p>
<p><i>Article 66.2</i></p> <p>2. The reports referred to in paragraph 1 shall include the following information in order to obtain a clear view of the implementation of the operational programme:</p> <p>(...)</p> <p>(j) the use made of assistance repaid to the Managing Authority or to another public authority during the period of implementation of the operational programme. The breadth of information transmitted to the Commission shall be proportional to the total amount of public expenditure of the operational programme concerned.</p> <p>(...)</p>	<p>The exact relationship between the breadth of information submitted and the amount of public expenditure should be clarified.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 73</i></p> <p>1. For programmes for which the level of co-financing from Community funds does not exceed 33 % of public expenditure under the operational programme and the amount of the Funds does not exceed EUR 250 million, the provisions referred to in Article 61 points (c), (d), and (e)(i) do not apply.</p> <p>2. For the programmes referred to in paragraph 1, the Member State may exercise the option to establish according to national rules the bodies and procedures for carrying out the functions laid down in Articles 59(b), and in Articles 60 and 61. Where a Member State exercises this option, the provisions of Article 58(1)(b) and (c), and of Article 60(1)(c) shall not apply. When the Commission adopts the implementing rules of Articles 59, 60 and 61, it shall specify the provisions which shall not apply to those Member States which exercise the option referred to in the first subparagraph.</p> <p>3. Article 70(3) shall apply, <i>mutatis mutandis</i>, where a Member State exercises the option referred to in paragraph 2, first subparagraph.</p> <p>4. For all operational programmes referred to in paragraph 1, and irrespective of whether a Member State exercises the option referred to paragraph 2, where the opinion on the compliance of the system has no reservations, or where all reservations have been withdrawn following corrective measures, the Commission may inform the Member State concerned that it will rely principally on the opinion provided by the Audit Authority, or the body designated by the Member State where it has exercised the option referred to, as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances. In the event that there are indications of irregularities which have not been detected in a timely way by the national audit authorities or which have not been subject to appropriate corrective measures, the Commission may require the Member State to carry out audits in accordance with Article 71(3) or it may carry out its own audits under Article 71(2) in order to obtain assurance on the correctness, legality and regularity of expenditures declared.</p>	<p>In theory, this simplified procedure would apply during the 2000 to 2006 period to 33 programmes in 10 Member States, for Community aid worth a total of 3 800 million euro (2 % of the Community aid budget for 2000 to 2006). This clause encourages Member States to take advantage of the associated simplification measures, and it could therefore concern more programmes than would in theory be calculated for the current programming period. Of particular interest in this connection is the exemption from the need to submit an audit strategy and an annual control report (Article 61(1)), the possibility of designating management and control bodies on the basis of national legislation (Articles 59 to 61) and the exemption from the need to designate certifying and audit authorities (Article 58(1)). Furthermore, when the report of the body stating compliance with the systems has been accepted by the Commission, the latter will carry out checks in exceptional cases only.</p>
<p><i>Article 73.2</i></p> <p>2. For the programmes referred to in paragraph 1, the Member State may exercise the option to establish according to national rules the bodies and procedures for carrying out the functions laid down in Articles 59(b), and in Articles 60 and 61. Where a Member State exercises this option, the provisions of Article 58(1)(b) and (c), and of Articles 60(1)(c) shall not apply. When the Commission adopts the implementing rules of Articles 59, 60 and 61, it shall specify the provisions which shall not apply to those Member States which exercise the option referred to in the first subparagraph.</p>	<p>It should be possible to assess all the implications of the option of the first indent, and it is therefore not justified to refer to later implementing rules to specify which provisions will not apply.</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 73.4</i></p> <p>4. For all operational programmes referred to in paragraph 1, and irrespective of whether a Member State exercises the option referred to paragraph 2, where the opinion on the compliance of the system has no reservations, or where all reservations have been withdrawn following corrective measures, the Commission may inform the Member State concerned that it will rely principally on the opinion provided by the Audit Authority, or the body designated by the Member State where it has exercised the option referred to, as to the correctness, legality and regularity of expenditure declared and will carry out its own on-the-spot audits only in exceptional circumstances.</p> <p>In the event that there are indications of irregularities which have not been detected in a timely way by the national audit authorities or which have not been subject to appropriate corrective measures, the Commission may require the Member State to carry out audits in accordance with Article 71(3) or it may carry out its own audits under Article 71(2) in order to obtain assurance on the correctness, legality and regularity of expenditures declared.</p>	<p>The phrase "in a timely way" should be replaced with an exact deadline.</p>
<p><i>Article 79</i></p> <p>Member States shall satisfy themselves that the body responsible for making the payments ensures that the beneficiaries receive the total amount of the contribution from public funds as quickly as possible and in full. No amounts shall be deducted or withheld, nor any further specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries.</p>	<p>The phrase 'as quickly as possible' should be replaced with an exact deadline.</p>
<p><i>Article 85.2</i></p> <p>2. If one of the conditions referred to in paragraph 1 is not met, the Member State and the certification authority shall be informed as soon as possible by the Commission that the payment request is unacceptable.</p>	<p>The phrase 'as soon as possible' should be replaced with an exact deadline.</p>
<p><i>Article 90.1</i></p> <p>1. The Commission shall decide to withhold from interim payments 20 % of the sums to be reimbursed by the Commission where the essential elements of the corrective action plan referred to in Article 70(3) have been implemented and the serious deficiencies referred to in the annual report by the audit authority for the programme referred to in Article 61, point (e)(i), have been rectified but amendments still need to be made to give the Commission reasonable assurance regarding the management and control systems.</p>	<p>Mention should also be made of the opinion referred to in Article 61(1)(e)(ii).</p>

COMMISSION'S PROPOSAL	THE COURT'S OBSERVATIONS
<p><i>Article 96.1</i></p> <p>1. The Commission shall inform the Member State and the authorities concerned in good time whenever there is a risk of application of the automatic decommitment provided for in Article 92. The Commission shall inform the Member State and the authorities concerned of the amount of the automatic decommitment resulting from the information in its possession.</p> <p>The Member State shall have two months' time from the date of receipt of that information to agree to the amount or submit its observations. The Commission shall carry out the automatic decommitment not later than nine months after the time limit referred to in Article 92.</p>	<p>What is meant by 'in good time' should be clarified.</p>
<p><i>Article 97</i></p> <p>1. Partial closure of operational programmes may be made at periods selected by the Member State.</p> <p>Partial closure shall relate to completed operations for which a final payment has been made to the beneficiary not later than 31 December of year n-1. For the purposes of this Regulation, operations shall be deemed completed where the activities under it have been actually carried out and the beneficiary has received a final payment or the beneficiary has provided a document of equivalent effect to the managing authority.</p> <p>2. The amount of payments corresponding to completed operations shall be identified in the statements of expenditure.</p> <p>Partial closure shall be made on condition that the managing authority sends the following to the Commission by 30 June of year n:</p> <p>a) a statement of expenditure relating to those operations;</p> <p>b) a statement certifying the legality and regularity of the transactions concerned by the statement of expenditure, issued by the audit authority for the programme referred to in Article 61.</p>	<p>It is important that the procedures provided for in the area of partial closures supply the same degree of assurance regarding the legality and regularity of expenditure as that which would result from the declaration on the final closure of the operational programme, in particular as regards the intensity and extent of the checks.</p>

This Opinion was adopted by the Court of Auditors in Luxembourg on 18 March 2005.

For the Court of Auditors
 Hubert WEBER
 President