Commission Implementing Regulation (EU) 2017/2011 of 9 November 2017 amending Regulation (EC) No 951/2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2011

of 9 November 2017

amending Regulation (EC) No 951/2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument[(1)], and in particular Article 12(1) thereof,

Whereas:

(1) The Commission adopted Regulation (EC) No 951/2007[(2)] laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council[(3)].

(2) By Commission Implementing Regulation (EU) No 435/2011[(4)], given the delayed start of the European Neighbourhood and Partnership Instrument cross-border cooperation programmes, the implementation phase for projects set out in point (b) of Article 43(2) of Regulation (EC) No 951/2007 was extended from 31 December 2014 to 31 December 2015. By Commission Implementing Regulation (EU) No 1343/2014[(5)], the closure phase and relevant provisions set out in paragraph (1), point (c) of paragraph (2) and the new paragraph (3) of Article 43 of Regulation (EC) No 951/2007 were adapted accordingly and extended to 31 December 2017.

(3) In order to provide legal certainty for participating countries, it is appropriate to lay down the specific arrangements and procedures for closure and waivers by the Joint Managing Authorities, respecting the principles of equal treatment, transparency, sound financial management and proportionality.

(4) The Joint Managing Authority may, in specific cases to be identified in appropriate instructions by the Commission and in accordance with the principles of sound financial management and proportionality, waive a recovery order without the prior approval of the Commission.

(5) The deadline of 31 December 2017 as fixed in Regulation (EC) No 951/2007 as amended cannot be met due to the accumulation of delays and to the complexity of the closing process. That deadline should therefore be extended to up to 36 months from the submission of the final report.

(6) It should be acknowledged that the Commission may be prevented from respecting the deadline for closure of joint operational programmes in case of judicial and other investigations and *force majeure*.

(7) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(8) The measures provided in this Regulation are in accordance with the opinion of the Committee established by Regulation (EU) No 232/2014.

(9) Regulation (EC) No 951/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 951/2007 is amended as follows:

(1) in Article 27, paragraph 5 is replaced by the following:

5. The Joint Managing Authority shall exercise due diligence to ensure reimbursement within one year of the issuing of the recovery order. In particular, it shall ensure that the claim is certain, of a fixed amount and due. Where the Joint Managing Authority is planning to waive recovery of an established debt, it shall ensure that the waiver is in order and complies with the principles of sound financial management and proportionality. The waiver decision must be substantiated and submitted to the Commission and the Joint Monitoring Committee for prior approval. Based on appropriate instructions of the Commission, the prior approval of the Commission may not be required;

(2) Article 43 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. The period of execution of each joint operational programme shall start at the earliest at the date of the adoption of the joint operational programme by the Commission and end at the latest 36 months after the submission of the final report.;

(b) point (c) of paragraph 2 is replaced by the following:

(c) a financial closure phase for the joint operational programme including the financial closure of all contracts concluded as part of the programme, the *ex post* evaluation of the programme, the submission of the final report, and the final payment or final recovery by the Commission. This phase shall end at the latest 36 months after the submission of the final report.;

(3) in Article 46, the following paragraph 3 is added:

3. Where the Joint Managing Authority has not been able to declare to the Commission final amounts because of:

a projects suspended by a legal proceeding or by an administrative appeal having suspensory effect; or