

**REGULATION (EU) No 1303/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 17 December 2013**

**laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinions of the Committee of the Regions <sup>(2)</sup>,

Having regard to the opinions of the Court of Auditors <sup>(3)</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Article 174 of the Treaty on the Functioning of the European Union (TFEU) provides that, in order to strengthen its economic, social and territorial cohesion, the Union is to aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, and that particular attention is to be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps. Article 175 TFEU requires that the Union is to support the achievement of these objectives by the action it takes through the European Agricultural Guidance and Guarantee Fund, Guidance Section, the European Social Fund, the European Regional Development Fund, the European Investment Bank and other instruments.

(2) In order to improve coordination and harmonise implementation of the Funds providing support under

cohesion policy, namely the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund, with the Fund for rural development, namely the European Agricultural Fund for Rural Development (EAFRD), and for the maritime and fisheries sector, namely measures financed under shared management in the European Maritime and Fisheries Fund (EMFF), common provisions should be established for all these Funds (the 'European Structural and Investment Funds' - 'ESI Funds'). In addition this Regulation contains general provisions which apply to the ERDF, the ESF and the Cohesion Fund, but do not apply to the EAFRD and the EMFF as well as general provisions applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF, but do not apply to the EAFRD. Due to the particularities that exist for each ESI Fund, specific rules applicable to each ESI Fund and to the European territorial cooperation goal under the ERDF should be specified in separate Regulations.

(3) In line with the conclusions of the European Council of 17 June 2010, whereby the Union strategy for smart, sustainable and inclusive growth was adopted, the Union and Member States should implement the delivery of smart, sustainable and inclusive growth, while promoting harmonious development of the Union and reducing regional disparities. The ESI Funds should play a significant role in the achievement of the objectives of the Union strategy for smart, sustainable and inclusive growth.

(4) As regards the Common Agricultural Policy (CAP), significant synergies have already been obtained by harmonising and aligning management and control rules for the first pillar (European Agricultural Guarantee Fund - EAGF) and the second pillar (EAFRD) of the CAP. The strong link between the EAGF and the EAFRD should therefore be maintained and the structures already in place in the Member States preserved.

(5) The outermost regions should benefit from specific measures and from additional funding to offset their structural social and economic situation together with the handicaps resulting from the factors referred to in Article 349 TFEU.

(6) The northern sparsely populated regions should benefit from specific measures and additional funding to offset the severe and natural or demographic handicaps referred to in Article 2 of Protocol No 6 to the 1994 Act of Accession.

<sup>(1)</sup> OJ C 191, 29.6.2012, p. 30, OJ C 44, 15.2.2013, p. 76 and OJ C 271, 19.9.2013, p. 101.

<sup>(2)</sup> OJ C 225, 27.7.2012, p. 58 and OJ C 17, 19.1.2013, p. 56.

<sup>(3)</sup> OJ C 47, 17.2.2011, p. 1, OJ C 13, 16.1.2013, p. 1 and OJ C 267, 17.9.2013, p. 1.

- (7) To ensure the correct and consistent interpretation of provisions and to contribute to legal certainty for Member States and beneficiaries, it is necessary to define certain terms that are used in this Regulation.
- (8) Where a time limit is set for the Commission to adopt or amend a decision, in accordance with this Regulation, the time limit for the adoption or amendment of such a decision should not include the period starting on the date on which the Commission has sent its observations to the Member State and lasting until the Member State has responded to those observations.
- (9) This Regulation consists of five parts, of which the first sets out the subject-matter and definitions, the second contains rules applicable to all ESI Funds, the third includes provisions applicable only to the ERDF, the ESF and the Cohesion Fund (the 'Funds'), the fourth includes provisions applicable only to the Funds and to the EMFF and the fifth includes the final provisions. In order to ensure consistency in the interpretation of the different parts of this Regulation and between this Regulation and the Fund-specific Regulations, it is important to set out clearly the relationships between them. In addition, specific rules established in the Fund-specific rules can be complementary but should derogate from the corresponding provisions in this Regulation only where such derogation is specifically provided for in this Regulation.
- (10) Under Article 317 TFEU, and in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the budget of the Union should be specified and the responsibilities of cooperation with the Member States clarified. Those conditions should enable the Commission to obtain assurance that Member States are using the ESI Funds in a legal and regular manner and in accordance with the principle of sound financial management within the meaning of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>(1)</sup> (the 'Financial Regulation'). Member States at the appropriate territorial level, in accordance with their institutional, legal and financial framework and the bodies designated by them for that purpose should be responsible for preparing and implementing programmes. Those conditions should also ensure that attention is drawn to the need to ensure complementarity and consistency of relevant Union intervention, to respect the principle of proportionality and take into account the overall aim of reducing administrative burden.
- (11) For the Partnership Agreement and each programme respectively, each Member State should organise a partnership with the representatives of competent regional, local, urban and other public authorities, economic and social partners and other relevant bodies representing civil society, including environmental partners, non-governmental organisations and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including, where appropriate, the umbrella organisations of such authorities and bodies. The purpose of such a partnership is to ensure respect for the principles of multi-level governance, and also of subsidiarity and proportionality and the specificities of the Member States' different institutional and legal frameworks as well as to ensure the ownership of planned interventions by stakeholders and build on the experience and the know-how of relevant actors. The Member States should identify the most representative relevant partners. Those partners should include institutions, organisations and groups which are capable of influencing the preparation or could be affected by the preparation and implementation of the programmes. In this context it should also be possible for Member States to identify, where appropriate, as relevant partners, umbrella organisations which are the associations, federations or confederations of relevant regional, local and urban authorities or other bodies in accordance with applicable national law and practices.
- The Commission should be empowered to adopt a delegated act providing for a European code of conduct on partnership in order to support and facilitate Member States in the organisation of partnership with regard to ensuring the involvement of relevant partners in the preparation, implementation, monitoring and evaluation of Partnership Agreements and programmes in a consistent manner. That adopted delegated act should have under no circumstances and in no way of its interpretation retroactive effect or be the basis for establishing irregularities leading to financial corrections. The adopted delegated act should not specify a date of application that is earlier than the date of its adoption. The adopted delegated act should allow Member States to decide on the most appropriate detailed arrangements for implementing the partnership in accordance with their institutional and legal framework as well as their national and regional competences, provided that its objectives, as laid down in this Regulation, are achieved.
- (12) The activities of the ESI Funds and the operations which they support should comply with applicable Union and the related national law which directly or indirectly implements this Regulation and the Fund-specific rules.
- (13) In the context of its effort to increase economic, territorial and social cohesion, the Union should, at all stages of implementation of the ESI Funds, aim at eliminating

<sup>(1)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

inequalities and at promoting equality between men and women and integrating the gender perspective, as well as at combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation as set out in Article 2 of the Treaty on the European Union (TEU), Article 10 TFEU and Article 21 of the Charter of Fundamental Rights of the European Union, taking into account in particular accessibility for persons with disabilities, as well as Article 5(2) of the Charter of Fundamental Rights stating that no one is to be required to perform forced or compulsory labour.

- (14) The objectives of the ESI Funds should be pursued in the framework of sustainable development and the Union's promotion of the aim of preserving, protecting and improving the quality of the environment as set out in Articles 11 and 191(1) TFEU, taking into account the polluter pays principle. To this end, the Member States should provide information on the support for climate change objectives, in line with the ambition to devote at least 20 % of the budget of the Union to those objectives, using a methodology based on the categories of intervention, focus areas or measures adopted by the Commission by means of an implementing act reflecting the principle of proportionality.
- (15) In order to contribute to the Union strategy for smart, sustainable and inclusive growth and to the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, the ESI Funds should focus their support on a limited number of common thematic objectives. The precise scope of each of the ESI Funds should be set out in Fund-specific rules. It should be possible to limit that scope to only some of the thematic objectives defined in this Regulation.
- (16) In order to maximise the contribution of the ESI Funds and to establish strategic guiding principles to facilitate the programming process at the level of Member States and the regions, a Common Strategic Framework ('CSF') should be established. The CSF should facilitate the sectoral and territorial coordination of Union intervention under the ESI Funds and with other relevant Union policies and instruments, in line with the targets and objectives of the Union strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges of the various types of territories.
- (17) The CSF should set out how the ESI Funds are to contribute to the Union strategy for smart, sustainable and inclusive growth, the arrangements to promote an integrated use of the ESI Funds, the arrangements for coordination between the ESI Funds and other relevant Union policies and instruments, horizontal principles and cross-cutting policy objectives for the implementation of the ESI Funds, the arrangements to address key territorial challenges and priority areas for cooperation activities under the ESI Funds.
- (18) Member States and regions increasingly face challenges that relate to the impact of globalisation, environmental and energy concerns, population ageing and demographic shifts, technological transformation and innovation demands, and social inequality. Due to the complex and interrelated nature of such challenges, the solutions supported by the ESI Funds should be of an integrated nature, multi-sectoral and multi-dimensional. In this context, and in order to increase the effectiveness and efficiency of the policies, it should be possible for the ESI Funds to be combined into integrated packages which are tailor-made to fit the specific territorial needs.
- (19) The combination of a shrinking working population and an increasing proportion of retired people in the general population as well as the problems associated with population dispersion, are expected to continue to place strains, inter alia, on Member States' education and social support structures and thus on the Union's economic competitiveness. Adapting to such demographic changes constitutes one of the core challenges that Member States and regions are to face in the years to come, and as such should be given a particularly high level of consideration for the regions most affected by demographic change.
- (20) On the basis of the CSF, each Member State should prepare, in cooperation with its partners, and in dialogue with the Commission, a Partnership Agreement. The Partnership Agreement should translate the elements set out in the CSF into the national context and set out firm commitments to the achievement of Union objectives through the programming of the ESI Funds. The Partnership Agreement should set out arrangements to ensure alignment with the Union strategy for smart, sustainable and inclusive growth as well as with the Fund-specific missions pursuant to their Treaty-based objectives, arrangements to ensure effective and efficient implementation of the ESI Funds and arrangements for the partnership principle and an integrated approach to territorial development. A distinction should be made between the essential elements of the Partnership Agreement which are subject to a Commission decision and other elements which are not subject to the Commission decision and can be amended by the Member State. It is necessary to envisage specific arrangements for the submission and adoption of the Partnership Agreement and the programmes should the entry into force of one or more Fund-specific Regulations be delayed or be expected to be delayed. This entails establishing provisions which allow for the submission and adoption of the Partnership Agreement even in the absence of certain elements in relation to the ESI Fund or Funds affected by the delay, and the later submission of a revised Partnership Agreement after the entry into force of the delayed Fund-specific Regulation or Regulations.

Since the programmes co-financed by the ESI Fund affected by the delay should in this case be submitted and adopted only after the entry into force of the Fund-specific Regulation concerned, appropriate deadlines for the submission of the affected programmes should also be laid down.

- (21) Member States should concentrate support to ensure a significant contribution to the achievement of Union objectives in line with their specific national and regional development needs. Ex ante conditionalities, as well as a concise and exhaustive set of objective criteria for their assessment, should be defined to ensure that the necessary prerequisites for the effective and efficient use of Union support are in place. To this end, an ex ante conditionality should apply to a priority of a given programme only when it has a direct and genuine link to, and a direct impact on, the effective and efficient achievement of a specific objective for an investment priority or a Union priority, given that not every specific objective is necessarily linked to an ex ante conditionality laid down in the Fund-specific rules. The assessment of applicability of an ex ante conditionality should take account of the principle of proportionality having regard to the level of support allocated, where appropriate. The fulfilment of the applicable ex ante conditionalities should be assessed by the Member State in the framework of its preparation of the programmes and, where appropriate, the Partnership Agreement. The Commission should assess the consistency and adequacy of the information provided by the Member State. In cases where there is a failure to fulfil an applicable ex ante conditionality within the deadline laid down, the Commission should have the power to suspend interim payments to the relevant priorities of the programme under precisely defined conditions.
- (22) The Commission should undertake a performance review based on a performance framework and in cooperation with the Member States, in 2019. The performance framework should be defined for each programme with a view to monitoring progress towards the objectives and targets set for each priority over the course of the 2014 - 2020 programming period (the 'programming period'). In order to ensure that the budget of the Union is not used in a wasteful or inefficient way, where there is evidence that a priority has seriously failed to achieve the milestones that relate only to financial indicators, output indicators and key implementation steps, set out in the performance framework, due to clearly identified implementation weaknesses previously communicated by the Commission, and the Member State has failed to take the necessary corrective action, the Commission should be able to suspend payments to the programme or, at the end of the programming period, to apply financial corrections. The application of financial corrections should take into account, with due respect for the principle of proportionality, the absorption level and external factors contributing to the failure. Financial corrections should not be applied where targets are not achieved because of the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in a Member State or because of reasons of force majeure seriously affecting the implementation of the priorities concerned. Result indicators should not be taken into account for the purposes of suspensions or financial corrections.
- (23) In order to facilitate the focus on performance and attainment of the objectives of the Union strategy for smart, sustainable and inclusive growth, a performance reserve consisting of 6 % of the total allocation for the Investment for growth and jobs goal, as well as for the EARDF and for measures financed under shared management in accordance with a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the 2014-2020 programming period (the 'EMFF Regulation'), should be established for each Member State. Due to their diversity and multi-country character, there should be no performance reserve for programmes under the European territorial cooperation goal. The resources allocated to the Youth Employment Initiative (YEI) as defined in the operational programme in accordance with Regulation (EU) No 1304/2013 of the European Parliament and of the Council<sup>(1)</sup> (the 'ESF Regulation'); to technical assistance at the initiative of the Commission; transfers from the first pillar of the CAP to the EAFRD under Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>(2)</sup>; transfers to the EAFRD pursuant to the provisions on voluntary adjustment of direct payments in 2013 and on transfers to the EAFRD, laid down in Council Regulation (EC) No 73/2009<sup>(3)</sup> in respect of calendar years 2013 and 2014; transfers to the Connecting Europe Facility from the Cohesion Fund; transfers to the Fund for European Aid for the Most Deprived, as defined in a future Union legal act; and innovative actions for sustainable urban development should be excluded for the purpose of calculating the performance reserve.
- (24) A closer link between cohesion policy and the economic governance of the Union is needed in order to ensure that the effectiveness of expenditure under the ESI Funds is underpinned by sound economic policies and that the ESI Funds can, if necessary, be redirected to addressing

<sup>(1)</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Regulation (EC) No 1081/2006 (See page 470 of this Official Journal).

<sup>(2)</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (See page 608 of this Official Journal).

<sup>(3)</sup> Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

the economic problems a Member State is facing. Under the first strand of measures linking effectiveness of ESI Funds to sound economic governance, the Commission should be able to request amendments to the Partnership Agreement and to the programmes in order to support the implementation of relevant Council recommendations or to maximise the growth and competitiveness impact of the available ESI Funds where Member States are receiving relevant financial assistance. Reprogramming should be used only in cases where it could indeed have a direct impact on the correction of the challenges identified in the relevant Council recommendations under the economic governance mechanisms in order to avoid frequent reprogramming which would disrupt fund management predictability. Under the second strand of measures linking effectiveness of ESI Funds to sound economic governance, where a Member State fails to take effective action in the context of the economic governance process, the Commission should make a proposal to the Council to suspend part or all of the commitments or payments for the programmes of that Member State. It is necessary to establish different procedures for the suspension of commitments and payments. Nevertheless, in both cases, when making a proposal for a suspension, the Commission should take into account all relevant information and give due consideration to any elements arising from, and opinions expressed through, the structured dialogue with the European Parliament.

The scope and level of a suspension should be proportionate and effective, and respect equality of treatment between Member States. Furthermore, a suspension should take into account the economic and social circumstances of the Member State concerned as well as the possible overall economic impact on a Member State resulting from the different steps of the excessive deficit procedure (EDP) and excessive imbalances procedure (EIP).

- (25) By virtue of Protocol No 15 on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, annexed to the TEU and to the TFEU, certain provisions on the excessive deficit and related procedures are not to apply to the United Kingdom. Provisions on suspension of all or part of payments and commitments should therefore not apply to the United Kingdom.
- (26) Due to the paramount importance of the principle of co-financing for the implementation of the ESI Funds, in order to ensure the ownership of the policies on the ground, and in line with the proportional application of suspensions, any decisions on suspensions triggered under the second strand of measures linking effectiveness of ESI Funds to sound economic governance should be made taking into account the specific requirements applicable to the Member State concerned to provide co-financing for the programmes financed from the ESI Funds. The suspensions should be lifted and the funds made available again to the Member State concerned as soon as the Member State takes the necessary action.
- (27) The ESI Funds should be implemented through programmes covering the programming period in accordance with the Partnership Agreement. Programmes should be drawn up by Member States based on procedures that are transparent, in accordance with their institutional and legal framework. Member States and the Commission should cooperate to ensure coordination and consistency of programming arrangements for the ESI Funds. As the content of programmes is closely interlinked with that of the Partnership Agreement, the programmes should be submitted within three months of the submission of the Partnership Agreement. A deadline of nine months from the date of entry into force of this Regulation should be provided for in relation to the submission of programmes under the European territorial cooperation goal in order to take into account the multi-country character of those programmes. In particular, a distinction should be made between the core elements of the Partnership Agreement and programmes which should be subject to a Commission decision and other elements which are not covered by the Commission decision and can be amended under the responsibility of the Member State. Programming should ensure consistency with the CSF and Partnership Agreement, coordination between the ESI Funds and with the other existing funding instruments and the input of the European Investment Bank if relevant.
- (28) With a view to ensuring consistency between programmes supported under different ESI Funds, particularly in the context of ensuring a contribution to the Union strategy for smart, sustainable and inclusive growth, it is necessary to set out common minimum requirements as regards the content of the programmes, which may be complemented by Fund-specific rules to take into account the specific nature of each ESI Fund.
- (29) It is necessary to lay down clear procedures for the assessment, adoption and amendment of programmes by the Commission. In order to ensure consistency between the Partnership Agreement and programmes, it should be specified that programmes, with the exception of programmes under the European territorial cooperation goal, cannot be approved before the adoption by the Commission of a decision approving the Partnership Agreement. To reduce the administrative burden on Member States, any approval of an amendment of certain parts of a programme by the Commission should result automatically in an amendment of the relevant parts of the Partnership Agreement. Furthermore, the immediate mobilisation of the resources allocated to the YEI should also be ensured by establishing special rules for the submission and the approval procedure of the dedicated operational programmes for the YEI referred to in the ESF Regulation.

- (30) In order to optimise the added value from investments funded wholly or in part through the budget of the Union in the field of research and innovation, synergies should be sought in particular between the operation of the ESI Funds and Horizon 2020, as set up in Regulation (EU) No 1291/2013 of the European Parliament and of the Council<sup>(1)</sup>, whilst respecting their distinct objectives. Key mechanisms for achieving those synergies should be the recognition of flat rates for eligible costs from Horizon 2020 for a similar operation and beneficiary and the possibility of combining funding from different Union instruments, including ESI Funds and Horizon 2020, in the same operation while avoiding double financing. In order to strengthen the research and innovation capacities of national and regional actors and to achieve the goal of building a "Stairway to excellence" in less developed regions and low-performing Research, Development and Innovation (RDI) Member States and regions, close synergies should be developed between the ESI Funds and Horizon 2020 in all relevant programme priorities.
- (31) Territorial cohesion has been added to the goals of economic and social cohesion by the TFEU, and it is necessary to address the role of cities, functional geographies and sub-regional areas facing specific geographical or demographic problems. To this end, and to better mobilise potential at a local level, it is necessary to strengthen and facilitate community-led local development by laying down common rules and ensuring close coordination for all relevant ESI Funds. Community-led local development should take into account local needs and potential, as well as relevant socio-cultural characteristics. Responsibility for the design and implementation of community-led local development strategies should be given to local action groups representing the interests of the community, as an essential principle. The detailed arrangements concerning the definition of the area and population covered by the community-led local development strategies should be set out in the relevant programmes in accordance with the Fund-specific rules.
- (32) In order to facilitate a manageable approach to its integration into the programming process, the community-led local development can be carried out under a single thematic objective, either to promote social inclusion and combat poverty, or to promote employment and labour mobility, notwithstanding that actions financed as part of community-led local development could contribute to all other thematic objectives.
- (33) Where an urban or territorial development strategy requires an integrated approach because it involves investments under more than one priority axis of one or more operational programmes, it should be possible for action supported by the Funds, that can be complemented with financial support from the EAFRD or the EMFF, to be carried out as an integrated territorial investment within an operational programme or programmes.
- (34) Financial instruments are increasingly important due to their leverage effect on the ESI Funds, their capacity to combine different forms of public and private resources to support public policy objectives, and because revolving forms of finance make such support more sustainable over the longer term.
- (35) Financial instruments supported by the ESI Funds should be used to address specific market needs in a cost effective way, in accordance with the objectives of the programmes, and should not crowd out private financing. The decision to finance support measures through financial instruments should be determined therefore on the basis of an ex ante assessment which has established evidence of market failures or sub-optimal investment situations and the estimated level and scope of public investment needs. The essential elements of the ex ante assessments should be clearly defined in this Regulation. Given the detailed nature of the ex ante assessment, provisions should be made allowing for the performance of the ex ante assessment in stages and also for reviewing and updating the ex ante assessment during implementation.
- (36) Financial instruments should be designed and implemented so as to promote substantial participation by private sector investors and financial institutions on an appropriate risk-sharing basis. To be sufficiently attractive to the private sector, it is essential that financial instruments are designed and implemented in a flexible manner. Managing authorities should therefore decide on the most appropriate forms for implementing financial instruments in order to address the specific needs of the target regions, in accordance with the objectives of the relevant programme, the results of the ex ante assessment and applicable State aid rules. Where applicable, such flexibility should also include the possibility to reuse part of the resources paid back during the eligibility period in order to provide for the preferential remuneration of private investors or public investors operating under the market economy principle. Such preferential remuneration should take into account market standards and ensure that any State aid complies with applicable Union and national law and is limited to the minimum amount necessary to compensate for the lack of private capital available, taking into account market failures or suboptimal investment situations.

<sup>(1)</sup> Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (See page 104 of this Official Journal).

- (37) In order to take account of the repayable character of support provided through financial instruments and to align with market practices, support from the ESI Funds provided to final recipients in the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments should be able to cover the entirety of the investments made by final recipients, without distinction of VAT related costs. Accordingly it should only be in cases where financial instruments are combined with grants that the way in which VAT is taken into account at the level of the final recipient should be relevant for the purposes of determining eligibility of expenditure related to the grant.
- (38) It could be justified where certain parts of an investment do not generate sufficient direct financial returns, to combine financial instruments with grant support, to the extent allowed under the applicable State aid rules, in order for the projects to be economically sustainable. Specific conditions preventing double financing in such a case should be set out.
- (39) In order to ensure that resources allocated to financial instruments in favour of SMEs achieve an effective and efficient critical mass of new SME debt finance, it should be possible to use those resources in the entire territory of the Member State concerned regardless of the categories of region therein. However, it should also be possible for negotiation of the funding agreement between the Member State and the EIB to allow for a pro-rata return to a region or group of regions within the same Member State, as part of a single dedicated national programme per financial contribution by the ERDF and EAFRD.
- (40) The contributions by Member States to joint uncapped guarantee and securitisation financial instruments in favour of SMEs should be phased over the years 2014, 2015 and 2016 and the amounts to be paid by the Member States to the EIB should be scheduled accordingly in the funding agreement, in line with standard banking practice and with a view to spreading the effects on payment appropriations in any individual year.
- (41) In the case of securitisation transactions it should be ensured at programme closure that at least the amount corresponding to the Union contribution has been used for the objective of supporting SMEs, in line with the principles relating to financial instruments set out in the Financial Regulation.
- (42) Managing authorities should have the flexibility to contribute resources from programmes to financial instruments set up at Union level and managed directly or indirectly by the Commission, or to instruments set up at national, regional, transnational or cross-border level and managed by or under the responsibility of the managing authority. Managing authorities should also have the possibility of implementing financial instruments directly, through existing or newly created funds or through funds of funds.
- (43) In the interests of ensuring proportionate control arrangements and of safeguarding the added value of financial instruments, intended final recipients should not be deterred by there being an excessive administrative burden. The bodies responsible for the audits of programmes should in the first instance carry out audits at the level of managing authorities and the bodies implementing financial instruments including funds of funds. However, there may be specific circumstances where the necessary documents to complete such audits are not available at the level of the managing authorities or at the level of the bodies implementing financial instruments or where such documents do not represent a true and accurate record of support provided. In such specific cases, it is necessary to lay down certain provisions to also allow for audits at the level of final recipients.
- (44) The amount of the resources paid at any time from the ESI Funds to financial instruments should correspond to the amount necessary to implement planned investments and payments to final recipients, including management costs and fees. Accordingly, applications for interim payments should be phased. The amount to be paid as an interim payment should be subject to a maximum ceiling of 25 % of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement, with subsequent interim payments conditional on a minimum percentage of the actual amounts included in previous applications having been spent as eligible expenditure.
- (45) It is necessary to lay down specific rules regarding the amounts to be accepted as eligible expenditure at closure of a programme, to ensure that the amounts, including the management costs and fees, paid from the ESI Funds to financial instruments are effectively used for investments in final recipients. The rules should be sufficiently flexible to make it possible to support equity-based instruments for the benefit of targeted enterprises and should, therefore, take into account certain characteristics specific to equity-based instruments for enterprises, such as market practices in relation to the provision of follow-on finance in the field of venture capital funds. Subject to the conditions laid down in this Regulation, targeted enterprises should be able to benefit from continued support from the ESI Funds to such instruments after the end of the eligibility period.

- (46) It is also necessary to lay down specific rules regarding the reuse of resources attributable to support from the ESI Funds until the end of the eligibility period and to lay down further rules regarding the use of resources after the end of the eligibility period.
- (47) As a general rule, support from the ESI Funds should not be used to finance investments which have already been physically completed or fully implemented at the date of the investment decision. However, in respect of infrastructure investments with the objective of supporting urban development or urban regeneration or similar infrastructure investments with the objective of diversifying non-agricultural activities in rural areas, a certain amount of support could be necessary for the re-organisation of a debt portfolio regarding infrastructure forming part of a new investment. In such cases it should be possible to use the support from the ESI Funds to reorganise a debt portfolio up to a maximum of 20 % of the total amount of programme support from the financial instrument to the investment.
- (48) Member States should monitor programmes in order to review implementation and progress towards achieving the programme's objectives. To this end, monitoring committees should be set up by the Member State, in accordance with its institutional, legal and financial framework and their composition and functions defined for the ESI Funds. Given the special nature of programmes under the European territorial cooperation goal, specific rules should be laid down for monitoring committees for those programmes. Joint monitoring committees could be set up to facilitate coordination between the ESI Funds. In order to ensure effectiveness, a monitoring committee should be able to make observations to managing authorities regarding implementation and evaluation of the programme, including actions related to the reduction of the administrative burden on beneficiaries and should monitor actions taken as a result of its observations.
- (49) Alignment of the monitoring and reporting arrangements of the ESI Funds is necessary to simplify management arrangements at all levels. It is important to ensure proportionate reporting requirements but also the availability of comprehensive information on progress made at key review points. Therefore it is necessary that reporting requirements reflect information needs in given years and are aligned with the timing of the performance review.
- (50) With a view to monitoring progress of programmes, an annual review meeting should take place between each Member State and the Commission. The Member State and the Commission should however be able to agree not to organise the meeting in years other than 2017 and 2019 in order to avoid an unnecessary administrative burden.
- (51) In order for the Commission to monitor progress made towards achieving Union objectives as well as Fund-specific missions pursuant to their Treaty-based objectives, Member States should submit progress reports on the implementation of their Partnership Agreements. On the basis of such reports, the Commission should prepare a strategic report on progress in 2017 and 2019. In order to provide for a regular strategic policy debate on the contribution of the ESI Funds to the achievement of the Union strategy on smart sustainable and inclusive growth, and to improve the quality of spending and the effectiveness of the policy in line with the European Semester, the strategic reports should be debated in the Council. On the basis of that debate the Council should be able to provide input to the assessment made at the spring meeting of the European Council on the role of all Union policies and instruments in delivering sustainable job-creating growth across the Union.
- (52) It is necessary to evaluate the effectiveness, efficiency and impact of assistance from the ESI Funds in order to improve the quality of design and implementation of programmes, and to determine the impact of programmes in relation to the targets under the Union strategy for smart, sustainable and inclusive growth and, having regard to the size of the programme, in relation to gross domestic product (GDP) and unemployment in the programme area concerned, where appropriate. The responsibilities of Member States and the Commission in this regard should be specified.
- (53) In order to improve the quality of the design of each programme, and verify whether its objectives and targets can be reached, an ex ante evaluation of each programme should be carried out.
- (54) An evaluation plan should be drawn up by the managing authority or Member State. It should be possible for that evaluation plan to cover more than one programme. During the programming period managing authorities should ensure that evaluations are carried out to assess the effectiveness, efficiency and impact of a programme. The monitoring committee and the Commission should be informed about the results of evaluations to facilitate management decisions.
- (55) Ex post evaluations should be carried out in order to assess the effectiveness and efficiency of the ESI Funds and their impact on the overall goals of the ESI Funds and the Union strategy for smart, sustainable and inclusive growth, taking account of the targets established for that Union strategy. For each of the ESI Funds, the Commission should prepare a synthesis report outlining the main conclusions of the ex-post evaluations.



- (56) The types of action that can be undertaken at the initiative of the Commission and of the Member States as technical assistance with support from the ESI Funds should be specified.
- (57) In order to ensure an effective use of Union resources, and avoid the over-financing of operations generating net revenue after completion, different methods should be used to determine the net revenue generated by such operations, including a simplified approach based on flat rates for sectors or subsectors. The flat rates should be based on historical data available to the Commission, the potential for cost recovery and the polluter-pays principle, where applicable. There should also be provision to extend flat rates to new sectors, introduce subsectors or review the rates for future operations when new data becomes available, by means of a delegated act. The use of flat rates could be particularly suitable for operations in the fields of information and communication technologies (ICT), RDI and energy efficiency. In addition, to ensure the application of the principle of proportionality and to take account of other regulatory and contractual provisions that could apply, it is necessary to set out the exemptions from those rules.
- (58) It is important to ensure a proportionate approach and avoid a duplication of the verification of financing needs in the case of operations which generate net revenue after completion which are also subject to State aid rules, given that such rules also establish limits on support which can be granted. Consequently, where there is *de minimis* aid, compatible State aid to SMEs with an aid intensity or an aid amount limit applied, or compatible State aid to large enterprises where an individual verification of financing needs in accordance with applicable State aid rules has been carried out, the provisions requiring the calculation of net revenue should not apply. Nevertheless, it should be open to a Member State to apply the methods for calculating net revenue where this is provided for in national rules.
- (59) Public Private Partnerships ("PPPs") can be an effective means of delivering operations which ensure the achievement of public policy objectives by bringing together different forms of public and private resources. In order to facilitate the use of ESI Funds to support operations structured as PPPs this Regulation should take account of certain characteristics specific to PPPs by adapting some of the common provisions on the ESI Funds.
- (60) The starting and closing dates for the eligibility of expenditure should be defined so as to provide for a uniform and equitable rule applying to the implementation of the ESI Funds across the Union. In order to facilitate the execution of programmes, it is appropriate to specify that the starting date for the eligibility of expenditure can be prior to 1 January 2014 if the Member State concerned submits a programme before that date. Taking into account the urgent need to mobilise the resources allocated to the YEI to support its immediate implementation, exceptionally the starting date for the eligibility of expenditure should be 1 September 2013. With a view to ensuring an effective use of ESI Funds and reducing the risk to the budget of the Union, it is necessary to put in place restrictions on support for completed operations.
- (61) In accordance with the principle of subsidiarity and subject to exceptions provided for in Regulation (EU) No 1301/2013 of the European Parliament and of the Council<sup>(1)</sup>, the ESF Regulation, Regulation (EU) No 1300/2013 of the European Parliament and of the Council<sup>(2)</sup>, Regulation (EU) No 1299/2013 of the European Parliament and of the Council<sup>(3)</sup>, Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>(4)</sup> and in the EMFF Regulation, Member States should adopt national rules on the eligibility of expenditure.
- (62) With a view to simplifying the use of the ESI Funds and reducing the risk of error, while providing for differentiation where needed to reflect the specificities of policy, it is appropriate to define the forms of support, harmonised conditions for the reimbursement of grants and repayable assistance, flat rate financing, specific eligibility rules for grants and repayable assistance and specific conditions on the eligibility of operations depending on location.
- (63) It should be possible to provide support from the ESI Funds in the form of grants, prizes, repayable assistance or financial instruments, or a combination thereof, in order to provide the bodies responsible with a choice of the most appropriate form of support to address identified needs.
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- <sup>(1)</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (See page 289 of this Official Journal).
- <sup>(2)</sup> Regulation (EU) No 1300/2013 of the European Parliament and of the Council of 17 December 2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006 (See page 281 of this Official Journal).
- <sup>(3)</sup> Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (See page 259 of this Official Journal).
- <sup>(4)</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development and repealing Regulation (EC) No 1698/2005 (See page 487 of this Official Journal).

- (64) To ensure the effectiveness, fairness and sustainable impact of the intervention of the ESI Funds, provisions guaranteeing that investments in businesses and infrastructures are long-lasting and prevent the ESI Funds from being used to undue advantage should be in place. Experience has shown that a period of five years is an appropriate minimum period to be applied, except where State aid rules provide for a different period. Nevertheless, and in line with the principle of proportionality, it is possible that a more limited period of three years would be justified where the investment concerns the maintenance of investments or jobs created by SMEs. In the case of an operation comprising investment in infrastructure or productive investment, and where the beneficiary is not an SME, such an operation should repay the contribution from the ESI Funds if, within 10 years of the final payment to the beneficiary, the productive activity is subject to relocation outside the Union. It is appropriate to exclude actions supported by the ESF and those not entailing productive investment or investment in infrastructure from the general requirement of durability, unless such requirements are derived from applicable State aid rules, and to exclude contributions to or from financial instruments. Sums unduly paid should be recovered and be subject to procedures applicable to irregularities.
- (65) Member States should adopt adequate measures to guarantee the proper set up and functioning of their management and control systems to give assurance on the legal and regular use of the ESI Funds. The obligations of Member States as regards the management and control systems of programmes, and in relation to the prevention, detection and correction of irregularities and infringements of Union law should therefore be specified.
- (66) In accordance with the principles of shared management, Member States and the Commission should be responsible for the management and control of programmes. Member States should have the primary responsibility, through their management and control systems, for the implementation and control of the operations in programmes. In order to strengthen the effectiveness of the control over the selection and implementation of operations and the functioning of the management and control system, the functions of the managing authority should be specified.
- (67) Member States should fulfil the management, control and audit obligations and assume the responsibilities as laid down in the rules on shared management set out in this Regulation, the Financial Regulation and in the Fund-specific rules. Member States should ensure that, in accordance with the conditions set out in this Regulation, effective arrangements for the examination of complaints in relation to the ESI Funds are in place. In accordance with the principle of subsidiarity, Member States should, upon request of the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements and should inform the Commission of the results of examinations upon request.
- (68) The powers and responsibilities of the Commission with regard to verifying the effective functioning of the management and control systems, and to require Member State action, should be laid down. The Commission should also have the power to carry out on-the-spot audits and checks focused on issues relating to sound financial management in order to be able to draw conclusions concerning the performance of the ESI Funds.
- (69) Budget commitments of the Union should be effected annually. In order to ensure effective programme management, it is necessary to lay down common rules for pre-financing, interim requests for payment and the final balance, without prejudice to specific rules that are required for each of the ESI Funds.
- (70) The pre-financing payment at the start of programmes ensures that a Member State has the means to provide support to beneficiaries from the start of the implementation of the programme, so that those beneficiaries receive advances where necessary to make the planned investments and are reimbursed quickly following the submission of payment claims. Therefore, provisions should be made for initial pre-financing amounts from the ESI Funds. Initial pre-financing should be totally cleared at closure of the programme.
- (71) In order to safeguard the Union's financial interests, measures should be provided for that are limited in time and that allow the authorising officer by delegation to interrupt payments where there is clear evidence to suggest a significant deficiency in the functioning of the management and control system, evidence of irregularities linked to a request for payment, or a failure to submit documents for the purpose of examination and acceptance of accounts. The duration of the interruption period should be for a period of up to six months, with a possible extension of that period up to nine months with the agreement of the Member State, to allow sufficient time to resolve the causes of the interruption thereby avoiding the application of suspensions.
- (72) In order to safeguard the budget of the Union, it is possible that it would be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of applicable Union law, or national law related to its application, can lead to financial corrections by the Commission. In order to ensure that any financial corrections which the Commission imposes on Member States are related to the protection of the Union's financial interests, such

corrections should be confined to cases where the breach of applicable Union law or national law related to applying relevant Union law concerns the eligibility, regularity, management or control of operations and the corresponding expenditure declared to the Commission. To ensure proportionality it is important that the Commission consider the nature and the gravity of the breach and the related financial implications for the budget of the Union when deciding on a financial correction.

- (73) In order to encourage financial discipline, it is appropriate to define the arrangements for decommitment of any part of the budgetary commitment in a programme, in particular where an amount can be excluded from decommitment, in particular where delays in implementation result from circumstances which are independent of the party concerned, abnormal or unforeseeable and the consequences of which cannot be avoided despite the diligence shown, as well as in a situation in which a request for payment has been made but for which the payment deadline has been interrupted or the payment suspended.
- (74) The decommitment procedure is also a necessary part of the mechanism for the allocation of the performance reserve and in such cases it should be possible to reconstitute the appropriations for their subsequent commitment to other programmes and priorities. In addition, in the implementation of certain specific financial instruments in favour of SMEs where decommitments result from the discontinuance of participation by a Member State in such financial instruments, the subsequent reconstitution of the appropriations for commitment in other programmes should be provided for. Given that the introduction of additional provisions in the Financial Regulation will be necessary in order to allow for such reconstitution of appropriations, such procedures should only apply with effect from the date of entry into force of the corresponding amendment to the Financial Regulation.
- (75) Additional general provisions are necessary in relation to the specific functioning of the Funds. In particular, in order to increase their added value, and to enhance their contribution to the priorities of the Union strategy for smart, sustainable and inclusive growth and the Fund-specific missions pursuant to their Treaty-based objectives, the functioning of the Funds should be simplified and concentrated on the Investment for growth and jobs goal and European territorial cooperation goal.
- (76) Additional provisions for the specific functioning of the EAFRD and the EMFF are set out in the relevant sector-specific legislation.
- (77) In order to promote the TFEU objectives of economic, social and territorial cohesion, the Investment for growth

and jobs goal should support all regions. To provide balanced and gradual support and reflect the level of economic and social development, resources under that goal should be allocated from the ERDF and the ESF among the less developed regions, the transition regions and the more developed regions according to their GDP per capita in relation to the EU-27 average. In order to ensure the long-term sustainability of investment from the Structural Funds, to consolidate the development achieved and to encourage the economic growth and social cohesion of the Union's regions, regions whose GDP per capita for the 2007-2013 programming period was less than 75 % of the average of the EU-25 for the reference period but whose GDP per capita has grown to more than 75 % of the EU-27 average should receive at least 60 % of their indicative average annual 2007-2013 allocation. The total allocation from the ERDF, the ESF and the Cohesion Fund for a Member State should be at least 55 % of its individual 2007-2013 total allocation. Member States whose per capita gross national income (GNI) is less than 90 % of that of the Union average should benefit under the Investment for growth and jobs goal from the Cohesion Fund.

- (78) Objective criteria should be fixed for designating eligible regions and areas for support from the Funds. To this end, the identification of the regions and areas at Union level should be based on the common system of classification of the regions established by Regulation (EC) No 1059/2003 of the European Parliament and the Council <sup>(1)</sup>, amended by Commission Regulation (EC) No 105/2007 <sup>(2)</sup>.
- (79) In order to set out an appropriate financial framework for the Funds, the Commission should establish, by means of implementing acts, the annual breakdown of available commitment appropriations using an objective and transparent method with a view to targeting the regions whose development is lagging behind, including those receiving transitional support. In order to take account of the particularly difficult situation of Member States suffering from the crisis, and in accordance with Council Regulation (EU, Euratom) No 1311/2013 <sup>(3)</sup>, the Commission should review the total allocations of all Member States in 2016 on the basis of the then available most recent statistics and, where there is a cumulative divergence of more than +/- 5 %, adjust those allocations. The required adjustment should be spread in equal proportions over the years 2017-2020.

<sup>(1)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

<sup>(2)</sup> Commission Regulation (EC) No 105/2007 of 1 February 2007 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 39, 10.2.2007, p. 1).

<sup>(3)</sup> Regulation (EU, Euratom) No 1311/2013 of the Council of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (See page 884 of this Official Journal).

- (80) In order to encourage the necessary acceleration of development of infrastructure in transport and energy as well as ICT across the Union, a Connecting Europe Facility (CEF) is created, in accordance with Regulation (EU) 1316/2013 of the European Parliament and of the Council<sup>(1)</sup>. Support should be provided from the Cohesion Fund to projects implementing core networks or for projects and horizontal activities identified in Part I of the Annex to that Regulation.
- (81) The allocation of the annual appropriations from the Funds to a Member State should be limited to a ceiling that would be fixed taking into account the GDP of that particular Member State.
- (82) It is necessary to fix the limits of resources for the Investment for growth and jobs goal and to adopt objective criteria for their allocation to regions and Member States. Member States should concentrate support to ensure sufficient investment is targeted at youth employment, labour mobility, knowledge, social inclusion and combating poverty, thus ensuring that the share of the ESF as a percentage of total combined resources for the Structural Funds and the Cohesion Fund at Union level, excluding the support from the Cohesion Fund for transport infrastructure under the CEF and support from the Structural Funds for aid for the most deprived, in Member States is not less than 23,1 %.
- (83) Given the urgent priority of addressing youth unemployment in the Union's most affected regions, as well as in the Union as a whole, a YEI is created and funded from a specific allocation and from targeted investment from the ESF to add to and reinforce the considerable support already provided through the ESI Funds. The YEI should aim to support young people, in particular those not in employment, education or training residing in the eligible regions. The YEI should be implemented as a part of the Investment for growth and jobs goal.
- (84) In addition, in line with the headline target on poverty reduction, it is necessary to reorient the Fund for European Aid for the Most Deprived to promote social inclusion. A mechanism should be envisaged which transfers resources to this instrument from the Structural Funds' allocations of each Member State.
- (85) Taking into account the present economic circumstances, the maximum level of transfer (capping) from the Funds to each individual Member State should not result in allocations per Member State higher than 110 % of their level in real terms for the 2007–2013 programming period.
- (86) With a view to ensuring an appropriate allocation to each category of regions, resources from the Funds should not be transferred between less developed, transition and more developed regions except in duly justified circumstances linked to the delivery of one or more thematic objectives. Such transfers should involve no more than 3 % of the total appropriation for that category of region.
- (87) In order to ensure a genuine economic impact, support from the Funds should not replace public or equivalent structural expenditure by Member States under the terms of this Regulation. In addition, so that the support from the Funds takes into account a broader economic context, the level of public expenditure should be determined with reference to the general macroeconomic conditions in which the financing takes place based on the indicators provided in the stability and convergence programmes submitted annually by Member States in accordance with Council Regulation (EC) No 1466/1997<sup>(2)</sup>. Verification by the Commission of the principle of additionality should concentrate on the Member States in which less developed regions cover at least 15 % of the population because of the scale of the financial resources allocated to them.
- (88) It is necessary to lay down additional provisions concerning the programming, management, monitoring and control of operational programmes supported by the Funds in order to strengthen the focus on results. In particular, it is necessary to set out detailed requirements for the content of the operational programmes. This should facilitate the presentation of a consistent intervention logic to tackle the development needs identified, to set out the framework for performance assessment and to underpin the effective and efficient implementation of the Funds. As a general principle a priority axis should cover one thematic objective, one Fund and one category of region. Where appropriate and in order to increase the effectiveness in a thematically coherent integrated approach, it should be possible for a priority axis to relate to more than one category of region and combine one or more complementary investment priorities from the ERDF, ESF and the Cohesion Fund under one or more thematic objectives.
- (89) In circumstances where a Member State prepares a maximum of one operational programme for each Fund, so that both the programmes and the Partnership Agreement are prepared at national level, specific arrangements should be set out to ensure the complementarity of such documents.

<sup>(1)</sup> Regulation 1316/2013 of the European Parliament and of the Council of 11 december 2013, establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

<sup>(2)</sup> Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, 2.8.1997, p. 1).

- (90) In order to reconcile the need for concise operational programmes setting out clear commitments by the Member States and the need to allow for flexibility for adjustment to changing circumstances, a distinction should be made between the essential elements of the operational programme which are subject to a Commission decision and other elements which are not subject to a Commission decision and can be amended by a Member State. Consequently provision should be made for procedures that allow for the amendment of those non-essential elements at national level without a decision by the Commission.
- (91) With a view to improving complementarities and simplifying implementation, it should be possible to combine support from the Cohesion Fund and the ERDF with support from the ESF in joint operational programmes under the Investment for growth and jobs goal.
- (92) Major projects represent a substantial share of Union spending and are frequently of strategic importance with respect to the achievement of the Union strategy for smart, sustainable and inclusive growth. Therefore it is justified that operations above certain thresholds continue to be subject to specific approval procedures under this Regulation. The threshold should be established in relation to total eligible cost after taking account of expected net revenues with a higher threshold for transport projects due to the typically larger size of investments in that sector. To ensure clarity, it is appropriate to define the content of a major project application for this purpose. The application should contain the necessary information to provide assurance that the financial contribution from the Funds does not result in a substantial loss of jobs in existing locations within the Union.
- (93) In order to promote the preparation and implementation of major projects on a sound, economic and technical basis and to encourage the use of expert advice at an early stage, where independent experts supported by technical assistance of the Commission or, in agreement with the Commission, other independent experts, are able to provide clear statements on a major project's feasibility and economic viability, the Commission approval procedure should be streamlined. The Commission should be able to refuse approval of the financial contribution only where it establishes a significant weakness in the independent quality review.
- (94) In cases where an independent quality review of a major project has not been undertaken, the Member State should submit all required information and the Commission should appraise the major project to determine whether the requested financial contribution is justified.
- (95) For the sake of continuity of implementation, in order to avoid an unnecessary administrative burden as well as for the purposes of alignment with the Commission Decision on guidelines on closure of the 2007-2013 programming period, phasing provisions are established for major projects approved under Council Regulation (EC) No 1083/2006 <sup>(1)</sup> whose implementation period is expected to extend over the programming period covered by this Regulation. Subject to certain conditions, there should be a fast track procedure for the notification and approval of a second or subsequent phase of a major project for which the preceding phase or phases were approved by the Commission under the 2007-2013 programming period. Each individual phase of the phased operation, which serves the same overall objective, should be implemented in accordance with the rules of the relevant programming period.
- (96) In order to give Member States the option of implementing part of an operational programme using a result-based approach, it is useful to provide for a joint action plan comprising a project or group of projects to be carried out by a beneficiary to contribute to the objectives of the operational programme. In order to simplify and reinforce the result orientation of the Funds, the management of the joint action plan should be exclusively based on jointly agreed milestones, outputs and results as defined in the Commission decision adopting the joint action plan. Control and audit of a joint action plan should also be limited to whether it achieves its milestones, outputs and results. Consequently, it is necessary to lay down rules on its preparation, content, adoption, financial management and control of joint action plans.
- (97) It is necessary to adopt specific rules in relation to the functions of the monitoring committee and the annual reports on implementation of operational programmes supported by the Funds. Additional provisions for the specific functioning of the EAFRD are set out in the relevant sector specific legislation.
- (98) To ensure the availability of essential and up to date information on programme implementation, it is necessary that Member States provide the Commission with the key data on a regular basis. In order to avoid an additional burden on Member States, this should be limited to data collected continuously, and the transmission should be performed by way of electronic data exchange.
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- <sup>(1)</sup> 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 (OJ L 210, 31.7.2006, p. 25).

- (99) In order to reinforce the monitoring of the progress with regard to the implementation of the Funds and to facilitate financial management, it is necessary to ensure the availability of basic financial data on the progress of implementation in a timely manner.
- (100) In accordance with Article 175 TFEU, the Commission is to submit Cohesion Reports to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving the Union's economic, social and territorial cohesion. It is necessary to lay down provisions concerning the content of this report.
- (101) It is important to bring the achievements of the Funds to the attention of the general public and to raise awareness of the objectives of cohesion policy. Citizens should have the right to know how the Union's financial resources are invested. The responsibility to ensure that the appropriate information is communicated to the public should lie with both the managing authorities and the beneficiaries as well as with Union institutions and advisory bodies. To ensure more efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation should also contribute to covering the corporate communication of the political priorities of the Union in so far as they are related to the general objectives of this Regulation.
- (102) With a view to strengthening accessibility and transparency of information about funding opportunities and project beneficiaries, in each Member State a single website or website portal providing information on all the operational programmes, including the lists of operations supported under each operational programme, should be made available.
- (103) For the purpose of ensuring wide dissemination of information about the achievements of the Funds and the role of the Union therein and to inform potential beneficiaries about funding opportunities, detailed rules taking account of the size of the operational programmes in accordance with the principle of proportionality about information and communication measures, as well as certain technical characteristics of such measures, should be defined in this Regulation.
- (104) In order to ensure that the allocation for each Fund is concentrated on the Union strategy for smart, sustainable and inclusive growth and the Fund-specific missions pursuant to their Treaty-based objectives, it is necessary to establish ceilings for the allocation to technical assistance of the Member State. It is also necessary to ensure that the legal framework for the programming of technical assistance facilitates the creation of streamlined delivery arrangements in a context where Member States implement multiple Funds in parallel and it should be possible for that framework to comprise several categories of regions.
- (105) It is necessary to determine the elements for modulating the co-financing rate from the Funds to priority axes, in particular, to increase the multiplier effect of Union resources. It is also necessary to establish the maximum rates of co-financing by category of region in order to ensure that the principle of co-financing is respected through an appropriate level of public or private national support.
- (106) It is necessary for Member States to designate a managing authority, a certifying authority and a functionally independent auditing authority for each operational programme. To provide flexibility for Member States in setting up control systems, it is appropriate to provide for the option for the functions of the certifying authority to be carried out by the managing authority. Member States should also be allowed to designate intermediate bodies to carry out certain tasks of the managing authority or the certifying authority. Member States should in that case lay down clearly their respective responsibilities and functions.
- (107) In order to take account of the specific organisation of the management and control systems for the Funds and the EMFF and the need to ensure a proportionate approach, specific provisions should be laid down in relation to the designation of the managing authority and the certifying authority. In order to avoid an unnecessary administrative burden, the ex ante verification of compliance with the designation criteria indicated in this Regulation should be limited to the managing and certifying authority, and, in accordance with the conditions laid down in this Regulation, no additional audit work should be required when the system is essentially the same as in the 2007-2013 programming period. There should be no requirement to approve the designation by the Commission. However, in order to increase legal certainty, Member States should have the option to submit the documents concerning the designation to the Commission subject to certain conditions laid down in this Regulation. The monitoring of compliance with the designation criteria carried out on the basis of audit and control arrangements should, where results show non-compliance with the criteria, give rise to remedial actions, and possibly to the ending of the designation.
- (108) The managing authority bears the main responsibility for the effective and efficient implementation of the Funds and the EMFF and thus fulfils a substantial number of functions related to programme management and monitoring, financial management and controls as well as project selection. Accordingly, the managing authority's responsibilities and functions should be set out.

- (109) The certifying authority should draw up and submit to the Commission payment applications. It should draw up the accounts, certifying their completeness, accuracy and veracity and that the expenditure entered in them complies with applicable Union and national rules. The certifying authority's responsibilities and functions should be set out.
- (110) The audit authority should ensure that audits are carried out on the management and control systems, on an appropriate sample of operations and on the accounts. The audit authority's responsibilities and functions should be set out. Audits of declared expenditure should be carried out on a representative sample of operations in order to enable the results to be extrapolated. As a general rule, a statistical sampling method should be used in order to provide a reliable representative sample. Nevertheless, audit authorities should be able to use in duly justified circumstances a non-statistical sampling method provided that the conditions laid down in this Regulation are complied with.
- (111) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it should obtain from national audit bodies.
- (112) In addition to common rules on financial management for the ESI Funds, additional provisions for the Funds and the EMFF should be laid down. In particular, with a view to ensuring reasonable assurance for the Commission prior to the acceptance of accounts, applications for interim payments should be reimbursed, at a rate of 90 % of the amount resulting from applying the co-financing rate for each priority, laid down in the decision adopting the operational programme, to the eligible expenditure for the priority. The outstanding amounts due should be paid to the Member States upon acceptance of accounts, provided that the Commission is able to conclude that the accounts are complete, accurate and true.
- (113) Beneficiaries should receive the support in full no later than 90 days from the date of submission of the payment claim by the beneficiary, subject to the availability of funding from initial and annual pre-financing and interim payments. The managing authority should be able to interrupt the deadline where supporting documents are incomplete or there is evidence of irregularity requiring further investigation. Initial and annual pre-financing should be provided for to ensure that Member States have sufficient means to implement programmes under such arrangements. Annual pre-financing should be cleared each year with the acceptance of accounts.
- (114) To reduce the risk of irregular expenditure being declared, it should be possible for a certifying authority, without any need for additional justification, to include the amounts which require further verification in an interim payment application after the accounting year in which they were entered into its accounting system.
- (115) To ensure the appropriate application of the general rules on decommitment, the rules established for the Funds and the EMFF should detail how the deadlines for decommitment are established.
- (116) In order to apply the requirements of the Financial Regulation to the financial management of the Funds and the EMFF, it is necessary to set out procedures for the preparation, examination and acceptance of accounts which should ensure a clear basis and legal certainty for these arrangements. In addition, in order to allow a Member State properly to fulfil its responsibilities, it should be possible for the Member State to exclude amounts which are the subject of an ongoing assessment of legality and regularity.
- (117) In order to reduce the administrative burden on beneficiaries, specific time limits should be set out during which the managing authorities are obliged to ensure the availability of documents for operations following submission of expenditure or completion of an operation. In accordance with the principle of proportionality, the period for keeping the documents should be differentiated depending on the total eligible expenditure of an operation.
- (118) As accounts are verified and accepted every year, a significant simplification of the closure procedure should be introduced. The final closure of the programme should therefore be based only on the documents relating to the final accounting year and the final implementation report or the last annual implementation report, without any need to provide any additional documents.
- (119) In order to safeguard the Union's financial interests and provide the means to ensure effective programme implementation, provisions should be laid down allowing for the suspension by the Commission of payments at the level of priorities or operational programmes.
- (120) In order to provide legal certainty for Member States, it is appropriate to lay down the specific arrangements and procedures for financial corrections by Member States and by the Commission in respect of the Funds and the EMFF respecting the principle of proportionality.

- (121) It is necessary to establish a legal framework which provides robust management and control systems at national and regional level and an appropriate division of roles and responsibilities in the context of shared management. The role of the Commission should therefore be specified and clarified and proportionate rules set out for the application of financial corrections by the Commission.
- (122) The frequency of audits on operations should be proportionate to the extent of the Union's support from the Funds and the EMFF. In particular, the number of audits carried out should be reduced where the total eligible expenditure for an operation does not exceed EUR 200 000 for the ERDF and the Cohesion Fund, and EUR 150 000 for the ESF, and EUR 100 000 for the EMFF. Nevertheless, it should be possible to carry out audits at any time where there is evidence of an irregularity or fraud, or, following closure of a completed operation, as part of an audit sample. The Commission should be able to review the audit trail of the audit authority or take part in on-the-spot audits of the audit authority. Where the Commission does not obtain the necessary assurance as to the effective functioning of the audit authority by those means, the Commission should be able to carry out a re-performance of the audit activity where this is in accordance with internationally accepted audit standards. In order that the level of auditing by the Commission is proportionate to the risk, the Commission should be able to reduce its audit work in relation to operational programmes where there are no significant deficiencies or where the audit authority can be relied on. In order to reduce the administrative burden on beneficiaries, specific rules should be introduced to reduce the risk of overlap between audits of the same operations by various institutions, namely the European Court of Auditors, the Commission and the audit authority.
- (123) In order to supplement and amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a European code of conduct on partnership, supplements and amendments of Sections 4 and 7 of the CSF, criteria for determining the level of financial correction to be applied, specific rules on the purchase of land and combination of technical support with financial instruments, the role, liabilities and responsibility of bodies implementing financial instruments, the management and control of financial instruments, the withdrawal of payments to financial instruments and the consequent adjustments in respect of applications for payments, the establishment of a system of capitalisation of annual instalments for financial instruments, the specific rules setting out the criteria for determining management costs and fees on the basis of performance and the applicable thresholds as well as rules for the reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit, the adjustment of the flat rate for net revenue generating operations in specific sectors, as well as the establishment of a flat rate for certain sectors or subsectors within the fields of ICT, research, development and innovation and energy efficiency and adding sectors or subsectors, the methodology for the calculation of the discounted net revenue for net revenue-generating operations, additional rules on the replacement of a beneficiary under PPP operations, minimum requirements to be included in PPP agreements which are necessary for the application of a derogation concerning eligibility of expenditure, the definition of the flat rate applied to indirect costs for grants based on existing methods and corresponding rates applicable in Union policies, the methodology to be used in carrying out the quality review of a major project, the criteria for determining the cases of irregularity to be reported, the data to be provided and the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by the responsibilities of Member States, the data to be recorded and stored in computerised form within monitoring systems established by managing authorities, the minimum requirements for audit trails, the scope and content of audits and the methodology for sampling, the use of data collected during audits, and the criteria for determining serious deficiencies in the effective functioning of management and control systems, for establishing the level of financial correction to be applied and for applying flat rates or extrapolated financial corrections. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (124) The Commission should be empowered to adopt, by means of implementing acts, as regards all the ESI Funds, decisions approving the elements of Partnership Agreements and their amendments, decisions approving elements of the revised Partnership Agreement, decisions on the programmes and priorities which have achieved their milestones and can benefit from the allocation of the performance reserve, decisions on the amendment of programmes as consequence of corrective actions concerning the transfer of financial allocations to other programmes, decisions on annual plans of actions to be financed from technical assistance at the initiative of the Commission, and, in the case of decommitment, decisions to amend decisions adopting programmes; and as regards the ERDF, the ESF and the Cohesion Fund, decisions identifying the regions and Member States fulfilling the Investment for growth and jobs criteria, decisions setting out the annual breakdown of commitment appropriations to the Member States, decisions setting out the amount to be transferred from



each Member State's Cohesion Fund allocation to the CEF, decisions setting out the amount to be transferred from each Member State's Structural Funds allocation to aid for the most deprived, decisions accepting transfers of parts of appropriations for the European territorial cooperation goal to the Investment for growth and jobs goal, decisions whether or not to carry out a financial correction in the case of

non-compliance with additionality, decisions adopting and amending operational programmes, decisions refusing the financial contribution to a major project, decisions on the approval of a financial contribution to a selected major project and the extension of the period for the realisation of the condition related to the approval of major projects and decisions on joint action plans; and as regards the ERDF, the ESF, the Cohesion Fund and the EMFF, decisions on non-acceptance of the accounts and the amount chargeable if the accounts were not accepted, decisions suspending interim payments and decisions on financial corrections.

- (125) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the model to be used when submitting the progress report, the model of operational programme for the Funds, methodology to be used in carrying out the cost-benefit analysis on major projects, the format for information on major projects, the model for the joint action plan, the model of the annual and final implementation reports, the frequency of the reporting of irregularities and the reporting format to be used, the model for the management declaration, and the models for the audit strategy, opinion and annual control report. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(1)</sup>.
- (126) In order to ensure the necessary input and better involvement of Member States when the Commission exercises its implementing powers with regard to this Regulation in certain particularly sensitive policy areas relating to the ESI Funds and in order to strengthen the Member States' role in adopting uniform conditions in such areas or other executive measures with substantial implications or with a potentially significant impact on either the national economy, the national budget or on the proper functioning of the public administration of the Member States, the implementing

acts relating to the methodology for providing information on the support for climate change objectives, the detailed arrangements to ensure a consistent approach for determining in the performance framework the milestones and targets for each priority and for assessing the achievement of the milestones and targets, standard terms and conditions for monitoring of financial instruments, the detailed arrangements for the transfer and management of programme contributions managed by the bodies implementing financial instruments, a model of the funding agreement concerning the joint uncapped guarantee and securitisation financial instruments in favour of SMEs, the models to be used when submitting additional information concerning financial instruments with the applications for payments to the Commission and when reporting on financial instruments to the Commission, the terms and conditions for the electronic data exchange system for management and control, the nomenclature, based on which the categories of intervention are to be defined concerning

the priority axis in operational programmes, the format for notification of the selected major project, the technical characteristics of information and communication measures for the operation and instructions for creating the emblem and the definition of its standard colours, the model to be used when submitting financial data to the Commission for monitoring purposes, detailed rules on the exchange of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies, the model for the report and the opinion of the independent audit body and the description of the functions and procedures in place for the managing authorities and, where appropriate, of the certifying authorities, the technical specifications of the management and control system, the model for payment applications and the model for the accounts should be adopted in accordance with the examination procedure as established in Article 5 of Regulation (EU) No 182/2011.

- (127) For certain implementing acts to be adopted in accordance with the examination procedure laid down in Article 5 of Regulation (EU) No 182/2011 the potential impact and implications are of such high significance to Member States that an exception from the general rule is justified. Accordingly, where no opinion is delivered by the committee, the Commission should not adopt the draft implementing act. Those implementing acts relate to setting out the methodology for providing information on the support for climate change objectives; determining the methodology for milestones and targets with regard to the performance framework; establishing the standard terms and conditions in relation to financial instruments; laying down the detailed arrangements for the transfer and management of programme contributions with regard

<sup>(1)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

to certain financial instruments; adopting a model of the funding agreement concerning the joint uncapped guarantee and securitisation financial instruments in favour of SMEs; establishing the model to be used when reporting on financial instruments to the Commission; determining the nomenclature, based on which the categories of intervention can be defined concerning the priority axis in operational programmes; concerning the technical characteristics of information and communication measures for the operation and instructions for creating the emblem and a definition of the standard colours; laying down the technical specifications of recording and data-storing in relation to the management and control system. The third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 should therefore apply to those implementing acts.

(128) Since this Regulation replaces Regulation (EC) No 1083/2006, that Regulation should therefore be repealed. Nevertheless, this Regulation should not affect either the continuation or modification of assistance approved by the Commission on the basis of Regulation (EC) No 1083/2006 or any other legislation applying to that assistance on 31 December 2013. Applications made or approved under Regulation (EC) No 1083/2006 should therefore remain valid. Special transitional rules should be also laid down by way of derogation from point (b) of Article 59(1) of Regulation (EC) No 1083/2006 as to when a managing authority can carry out the functions of the certifying authority for operational programmes, implemented under the previous legislative framework, for the purposes of the Commission assessment in accordance with Article 73(3) of the Regulation (EC) No 1083/2006 when applying Article 123(5) of this Regulation and concerning the approval procedure of major projects under point (a) of Article 102(1) of this Regulation.

(129) Since the objective of this Regulation, namely to strengthen economic, social and territorial cohesion cannot be sufficiently achieved by the Member States by reason of the extent of the disparities between the levels of development of the various regions and the backwardness of the least favoured regions and the limit on the financial resources of the Member States and regions, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(130) 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*,

HAVE ADOPTED THIS REGULATION:

## PART ONE

### SUBJECT-MATTER AND DEFINITIONS

#### Article 1

#### Subject-matter

This Regulation lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the 'European Structural and Investment' - 'ESI Funds'). It also lays down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments. The common rules applying to the ESI Funds are set out in Part Two.

Part Three lays down the general rules governing the ERDF, the ESF (together referred to as the 'Structural Funds') and the Cohesion Fund concerning the tasks, priority objectives and organisation of the Structural Funds and the Cohesion Fund (the 'Funds'), the criteria that Member States and regions are required to fulfil in order to be eligible for support from the Funds, the financial resources available and the criteria for their allocation.

Part Four lays down general rules applicable to the Funds and the EMFF on management and control, financial management, accounts and financial corrections.

The rules set out in this Regulation shall apply without prejudice to the provisions laid down in Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>(1)</sup> and to the specific provisions laid down in the following Regulations (the 'Fund-specific Regulations') in accordance with the fifth paragraph of this Article:

- (1) Regulation (EU) No 1301/2013 (the 'ERDF Regulation');
  - (2) Regulation (EU) No 1304/2013 (the 'ESF Regulation');
  - (3) Regulation (EU) No 1300/2013 (the 'CF Regulation');
  - (4) Regulation (EU) No 1299/2013 (the 'ETC Regulation');
  - (5) Regulation (EU) No 1305/2013 (the 'EAFRD Regulation');
- and

<sup>(1)</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agriculture policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (See page 549 of this Official Journal).

(6) a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014 - 2020 (the 'EMFF Regulation').

Part Two of this Regulation shall apply to all the ESI Funds except when it explicitly allows for derogations. Parts Three and Four of this Regulation shall establish complementary rules to Part Two that apply respectively to the Funds and to the Funds and the EMFF and may explicitly allow for derogations in the Fund-specific Regulations concerned. The Fund-specific Regulations may establish complementary rules to Part Two of this Regulation for the Funds and to Part Three of this Regulation for the Funds and to Part Four of this Regulation for the Funds and the EMFF. The complementary rules in the Fund-specific Regulations shall not be in contradiction with Parts Two, Three or Four of this Regulation. In case of doubt about the application between provisions, Part Two of this Regulation shall prevail over the Fund-specific rules, and Parts Two, Three and Four of this Regulation shall prevail over the Fund-specific Regulations.

## Article 2

### Definitions

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

- (1) 'Union strategy for smart, sustainable and inclusive growth' means the targets and shared objectives guiding the action of Member States and the Union set out in the Conclusions adopted by the European Council of 17 June 2010 as Annex I (New European Strategy for Jobs and Growth, EU Headline Targets), Council Recommendation of 13 July 2010<sup>(1)</sup> and in Council Decision 2010/707/EU<sup>(2)</sup>, and any revision of such targets and shared objectives;
- (2) 'a strategic policy framework' means a document or a set of documents established at national or regional level, which sets out a limited number of coherent priorities established on the basis of evidence and a timeframe for the implementation of those priorities and which may include a monitoring mechanism;
- (3) 'smart specialisation strategy' means the national or regional innovation strategies which set priorities in order to build competitive advantage by developing and matching research and innovation own strengths to business needs in order to address emerging opportunities and market developments in a coherent manner, while avoiding duplication and fragmentation of efforts; a smart specialisation strategy may take the form of, or be included in, a national or regional research and innovation (R&I) strategic policy framework;
- (4) 'Fund-specific rules' means the provisions laid down in, or established on the basis of, Part Three or Part Four of this Regulation or a Regulation governing one or more of the ESI Funds listed in the fourth paragraph of Article 1;
- (5) 'programming' means the process of organisation, decision-making and allocation of financial resources in several stages, with the involvement of partners in accordance with Article 5, intended to implement, on a multi-annual basis, joint action by the Union and the Member States to achieve the objectives of the Union strategy for smart, sustainable and inclusive growth;
- (6) 'programme' means an 'operational programme' as referred to in Part Three or Part Four of this Regulation and in the EMFF Regulation, and 'rural development programme' as referred to in the EAFRD Regulation;
- (7) 'programme area' means a geographical area covered by a specific programme or, in the case of a programme covering more than one category of region, the geographical area corresponding to each separate category of region;
- (8) 'priority' in Parts Two and Four of this Regulation means the 'priority axis' referred to in Part Three of this Regulation for ERDF, ESF and the Cohesion Fund and the 'Union priority' referred to in the EMFF Regulation and in the EAFRD Regulation;
- (9) 'operation' means a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities; in the context of financial instruments, an operation is constituted by the financial contributions from a programme to financial instruments and the subsequent financial support provided by those financial instruments;
- (10) 'beneficiary' means a public or private body and, for the purposes of the EAFRD Regulation and of the EMFF Regulation only, a natural person, responsible for initiating or both initiating and implementing operations; and in the context of State aid schemes, as defined in point 13 of this Article, the body which receives the aid; and in the context of financial instruments under Title IV of Part Two of this Regulation, it means the body that implements the financial instrument or the fund of funds as appropriate;
- (11) 'financial instruments' means financial instruments as defined in the Financial Regulation, save where otherwise provided in this Regulation;

<sup>(1)</sup> Council Recommendation of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union (OJ L 191, 23.7.2010, p. 28).

<sup>(2)</sup> Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States (OJ L 308, 24.11.2010, p. 46).

- (12) 'final recipient' means a legal or natural person receiving financial support from a financial instrument;
- (13) 'State aid' means aid falling under Article 107(1) TFEU which shall be deemed for the purposes of this Regulation also to include de minimis aid within the meaning of Commission Regulation (EC) No 1998/2006 <sup>(1)</sup>, Commission Regulation (EC) No 1535/2007 <sup>(2)</sup> and Commission Regulation (EC) No 875/2007 <sup>(3)</sup>;
- (14) 'completed operation' means an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries;
- (15) 'public expenditure' means any public contribution to the financing of operations the source of which is the budget of national, regional or local public authorities, the budget of the Union related to the ESI Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies and, for the purpose of determining the co-financing rate for ESF programmes or priorities, may include any financial resources collectively contributed by employers and workers;
- (16) 'public law body' means any body governed by public law within the meaning of point 9 of Article 1 of Directive 2004/18/EC of the European Parliament and of the Council <sup>(4)</sup> and any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council <sup>(5)</sup>, regardless of whether the EGTC is considered to be a public law body or a private law body under the relevant national implementing provisions;
- (17) 'document' means a paper or an electronic medium bearing information of relevance in the context of this Regulation;
- (18) 'intermediate body' means any public or private body which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority, in relation to beneficiaries implementing operations;
- (19) 'community-led local development strategy' means a coherent set of operations the purpose of which is to meet local objectives and needs, and which contributes to achieving the Union strategy for smart, sustainable and inclusive growth, and which is designed and implemented by a local action group;
- (20) 'Partnership Agreement' means a document prepared by a Member State with the involvement of partners in line with the multi-level governance approach, which sets out that Member State's strategy, priorities and arrangements for using the ESI Funds in an effective and efficient way so as to pursue the Union strategy for smart, sustainable and inclusive growth, and which is approved by the Commission following assessment and dialogue with the Member State concerned;
- (21) 'category of regions' means the categorisation of regions as 'less developed regions', 'transition regions' or 'more developed regions' in accordance with Article 90(2);
- (22) 'request for payment' means a payment application or declaration of expenditure submitted by the Member State to the Commission;
- (23) 'EIB' means the European Investment Bank, the European Investment Fund or any subsidiary of the European Investment Bank;
- (24) 'Public private partnerships' (PPPs) means forms of cooperation between public bodies and the private sector, which aim to improve the delivery of investments in infrastructure projects or other types of operations, delivering public services through risk sharing, pooling of private sector expertise or additional sources of capital;
- (25) 'PPP operation' means an operation which is implemented or intended to be implemented under a public-private-partnership structure;
- (26) 'escrow account' means a bank account covered by a written agreement between a managing authority or an intermediate body and the body implementing a financial instrument, or, in the case of a PPP operation, a written agreement between a public body beneficiary and the private partner approved by the managing authority or an intermediate body, set up specifically to hold funds to be paid out after the eligibility period, exclusively for the purposes provided for in point (c) of Article 42(1), Article 42(2), Article 42(3) and Article 64, or a bank account set up on terms providing equivalent guarantees on the payments out of the funds;
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- <sup>(1)</sup> Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (OJ L 379, 28.12.2006, p. 5).
- <sup>(2)</sup> Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the sector of agricultural production (OJ L 337, 21.12.2007, p. 35).
- <sup>(3)</sup> Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector and amending Regulation (EC) No 1860/2004 (OJ L 193, 25.7.2007, p. 6).
- <sup>(4)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).
- <sup>(5)</sup> Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

- (27) 'fund of funds' means a fund set up with the objective of contributing support from a programme or programmes to several financial instruments. Where financial instruments are implemented through a fund of funds, the body implementing the fund of funds shall be considered to be the only beneficiary within the meaning of point 10 of this Article;
- (28) 'SME' means a micro, small or medium sized enterprise as defined in Commission Recommendation 2003/361/EC <sup>(1)</sup>;
- (29) 'accounting year', means, for the purposes of Part Three and Part Four, the period from 1 July to 30 June, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2015. The final accounting year shall be from 1 July 2023 to 30 June 2024;
- (30) 'financial year', means, for the purposes of Part Three and Part Four, the period from 1 January to 31 December;
- (31) 'macroregional strategy' means an integrated framework endorsed by the European Council, which may be supported by the ESI Funds among others, to address common challenges faced by a defined geographical area relating to Member States and third countries located in the same geographical area which thereby benefit from strengthened cooperation contributing to achievement of economic, social and territorial cohesion;
- (32) 'sea basin strategy' means a structured framework of cooperation in relation to a given geographical area, developed by Union institutions, Member States, their regions and where appropriate third countries sharing a sea basin; a sea basin strategy takes into account the geographic, climatic, economic and political specificities of the sea basin;
- (33) 'applicable ex ante conditionality' means a concrete and precisely pre-defined critical factor, which is a prerequisite for and has a direct and genuine link to, and direct impact on, the effective and efficient achievement of a specific objective for an investment priority or a Union priority;
- (34) 'specific objective' means the result to which an investment priority or Union priority contributes in a specific national or regional context through actions or measures undertaken within such a priority;
- (35) 'relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU' and 'relevant Council recommendations adopted in accordance with Article 148(4) TFEU' mean recommendations relating to structural challenges which it is appropriate to address through multiannual investments that fall directly within the scope of the ESI Funds as set out in the Fund-specific Regulations;
- (36) 'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.
- (37) 'economic operator' means any natural or legal person or other entity taking part in the implementation of assistance from the ESI Funds, with the exception of a Member State exercising its prerogatives as a public authority;
- (38) 'systemic irregularity' means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules;
- (39) 'serious deficiency in the effective functioning of a management and control system' means, for the purposes of implementation of the Funds and the EMFF under Part Four, a deficiency for which substantial improvements in the system are required, which exposes the Funds and the EMFF to a significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system.

### Article 3

#### Calculation of time limits for Commission decisions

Where, pursuant to Articles 16(2) and (3), 29(3), 30 (2) and (3), 102(2), 107(2), and 108(3), a time limit is set for the Commission to adopt or amend a decision, by means of an implementing act, that time limit shall not include the period which starts on the date following the date on which the Commission sends its observations to the Member State and lasts until the Member State responds to the observations.

<sup>(1)</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

**PART TWO****COMMON PROVISIONS APPLICABLE TO THE ESI FUNDS**

## TITLE I

**PRINCIPLES OF UNION SUPPORT FOR THE ESI FUNDS***Article 4***General principles**

1. The ESI Funds shall provide support, through multi-annual programmes, which complements national, regional and local intervention, to deliver the Union strategy for smart, sustainable and inclusive growth, as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion taking account of the relevant Europe 2020 Integrated Guidelines and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU, and of the relevant Council recommendations adopted in accordance with Article 148(4) TFEU and where appropriate at national level, the National Reform Programme.

2. The Commission and the Member States shall ensure, taking account of the specific context of each Member State, that support from the ESI Funds is consistent with the relevant policies, horizontal principles referred to in Articles 5, 7 and 8 and priorities of the Union, and that it is complementary to other instruments of the Union.

3. Support from the ESI Funds shall be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.

4. Member States, at the appropriate territorial level, in accordance with their institutional, legal and financial framework, and the bodies designated by them for that purpose shall be responsible for preparing and implementing programmes and carrying out their tasks, in partnership with the relevant partners referred to in Article 5, in compliance with this Regulation and the Fund-specific rules.

5. Arrangements for the implementation and use of the ESI Funds, and in particular the financial and administrative resources required for the preparation and implementation of programmes, in relation to monitoring, reporting, evaluation, management and control, shall respect the principle of proportionality having regard to the level of support allocated and shall take into account the overall aim of reducing the administrative burden on bodies involved in the management and control of the programmes.

6. In accordance with their respective responsibilities, the Commission and the Member States shall ensure coordination between the ESI Funds and between the ESI Funds and other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.

7. The part of the budget of the Union allocated to the ESI Funds shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 59 of the Financial Regulation, with the exception of the amount of support from the Cohesion Fund transferred to the CEF referred to in Article 92(6) of this Regulation, innovative actions at the initiative of the Commission under Article 8 of the ERDF Regulation, technical assistance at the initiative of the Commission and the support for direct management under the EMFF Regulation.

8. The Commission and the Member States shall respect the principle of sound financial management in accordance with Article 30 of the Financial Regulation.

9. The Commission and the Member States shall ensure the effectiveness of the ESI Funds during preparation and implementation, in relation to monitoring, reporting and evaluation.

10. The Commission and the Member States shall carry out their respective roles in relation to the ESI Funds with the aim of reducing the administrative burden on beneficiaries.

*Article 5***Partnership and multi-level governance**

1. For the Partnership Agreement and each programme, each Member State shall in accordance with its institutional and legal framework organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:

(a) competent urban and other public authorities;

(b) economic and social partners; and

(c) relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

2. In accordance with the multi-level governance approach, the partners referred to in paragraph 1 shall be involved by Member States in the preparation of Partnership Agreements and progress reports and throughout the preparation and implementation of programmes, including through participation in the monitoring committees for programmes in accordance with Article 48.

3. The Commission shall be empowered to adopt a delegated act in accordance with Article 149 to provide for a European code of conduct on partnership (the 'code of conduct') in order to support and facilitate Member States in the organisation of

partnership in accordance with paragraphs 1 and 2 of this Article. The code of conduct shall set out the framework within which the Member States, in accordance with their institutional and legal framework as well as their national and regional competences, shall pursue the implementation of partnership. The code of conduct, while fully respecting the principles of subsidiarity and proportionality, shall lay down the following elements:

- (a) the main principles concerning transparent procedures to be followed for the identification of the relevant partners including, where appropriate, their umbrella organisations in order to facilitate Member States in designating the most representative relevant partners, in accordance with their institutional and legal framework;
- (b) the main principles and good practices concerning the involvement of the different categories of relevant partners set out in paragraph 1 in the preparation of the Partnership Agreement and programmes, the information to be provided concerning their involvement, and at the various stages of implementation;
- (c) the good practices concerning the formulation of the rules of membership and internal procedures of monitoring committees to be decided, as appropriate, by the Member States or the monitoring committees of programmes in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- (d) the main objectives and good practices in cases where the managing authority involves the relevant partners in the preparation of calls for proposals and in particular good practices for avoiding potential conflicts of interest in cases where there is a possibility of relevant partners also being potential beneficiaries, and for the involvement of the relevant partners in the preparation of progress reports and in relation to monitoring and evaluation of programmes in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- (e) the indicative areas, themes and good practices concerning how the competent authorities of the Member States may use the ESI Funds including technical assistance to strengthen the institutional capacity of relevant partners in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- (f) the role of the Commission in the dissemination of good practices;
- (g) the main principles and good practices that are apt to facilitate the Member States' assessment of the implementation of partnership and its added value.

The provisions of the code of conduct shall not in any way contradict the relevant provisions of this Regulation or the Fund-specific rules.

4. The Commission shall notify the delegated act, referred to in paragraph 3 of this Article, on the European code of conduct on partnership, simultaneously to the European Parliament and to the Council by 18 April 2014. That delegated act shall not specify a date of application that is earlier than the date of its adoption.

5. An infringement of any obligation imposed on Member States either by this Article or by the delegated act adopted pursuant to paragraph 3 of this Article, shall not constitute an irregularity leading to a financial correction pursuant to Article 85.

6. At least once a year, for each ESI Fund, the Commission shall consult the organisations which represent the partners at Union level on the implementation of support from that ESI Fund and shall report to the European Parliament and the Council on the outcome.

#### *Article 6*

##### **Compliance with Union and national law**

Operations supported by the ESI Funds shall comply with applicable Union law and the national law relating to its application ('applicable law').

#### *Article 7*

##### **Promotion of equality between men and women and non-discrimination**

The Member States and the Commission shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of programmes, including in relation to monitoring, reporting and evaluation.

The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.

#### *Article 8*

##### **Sustainable development**

The objectives of the ESI Funds shall be pursued in line with the principle of sustainable development and with the Union's promotion of the aim of preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU, taking into account the polluter pays principle.

The Member States and the Commission shall ensure that environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of Partnership Agreements and programmes. Member States shall provide information on the support for climate change objectives using a methodology based on the categories of intervention, focus areas or measures, as appropriate, for each of the ESI Funds. That methodology shall consist of assigning a specific weighting to the support provided under the ESI Funds at a level which reflects the extent to which such support makes a contribution to climate change mitigation and adaptation goals. The specific weighting assigned shall be differentiated on the basis of whether the support makes a significant or a moderate contribution towards climate change objectives. Where the support does not contribute towards those objectives or the contribution is insignificant, a weighting of zero shall be assigned. In the case of the ERDF, the ESF and the Cohesion Fund weightings shall be attached to categories of intervention established within the nomenclature adopted by the Commission. In the case of the EAFRD weightings shall be attached to focus areas set out in the EAFRD Regulation and in the case of the EMFF to measures set out in the EMFF Regulation.

The Commission shall set out uniform conditions for each of the ESI Funds for the application of the methodology referred to in the second paragraph by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 150(3).

## TITLE II

### STRATEGIC APPROACH

#### CHAPTER I

#### ***Thematic objectives for the ESI Funds and Common Strategic Framework***

##### *Article 9*

#### **Thematic objectives**

In order to contribute to the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, each ESI Fund shall support the following thematic objectives:

- (1) strengthening research, technological development and innovation;
- (2) enhancing access to, and use and quality of, ICT;
- (3) enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF);
- (4) supporting the shift towards a low-carbon economy in all sectors;
- (5) promoting climate change adaptation, risk prevention and management;
- (6) preserving and protecting the environment and promoting resource efficiency;
- (7) promoting sustainable transport and removing bottlenecks in key network infrastructures;
- (8) promoting sustainable and quality employment and supporting labour mobility;
- (9) promoting social inclusion, combating poverty and any discrimination;
- (10) investing in education, training and vocational training for skills and lifelong learning;
- (11) enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

Thematic objectives shall be translated into priorities that are specific to each of the ESI Funds and are set out in the Fund-specific rules.

#### *Article 10*

#### **Common Strategic Framework**

1. In order to promote the harmonious, balanced and sustainable development of the Union, a Common Strategic Framework ('CSF') is hereby established, as set out in Annex I. The CSF establishes strategic guiding principles to facilitate the programming process and the sectoral and territorial coordination of Union intervention under the ESI Funds and with other relevant Union policies and instruments, in line with the targets and objectives of the Union strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges of the various types of territories.

2. The strategic guiding principles as set out in the CSF shall be established in line with the purpose and within the scope of the support provided by each ESI Fund, and in line with the rules governing the operation of each ESI Fund, as defined in this Regulation and the Fund-specific rules. The CSF shall not impose additional obligations upon Member States beyond those set out within the framework of the relevant sectoral Union policies.

3. The CSF shall facilitate the preparation of the Partnership Agreement and programmes in accordance with the principles of proportionality and subsidiarity and taking into account national and regional competences, in order for the specific and appropriate policy and coordination measures to be decided.



*Article 11***Content**

The CSF shall establish:

- (a) mechanisms for ensuring the contribution of the ESI Funds to the Union strategy for smart, sustainable and inclusive growth, and the coherence and consistency of the programming of the ESI Funds in relation to the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU, the relevant Council recommendations adopted in accordance with 148(4) TFEU, and where appropriate at national level, to the National Reform Programme;
- (b) arrangements to promote an integrated use of the ESI Funds;
- (c) arrangements for coordination between the ESI Funds and other relevant Union policies and instruments, including external instruments for cooperation;
- (d) horizontal principles referred to in Articles 5, 7 and 8 and cross-cutting policy objectives for the implementation of the ESI Funds;
- (e) arrangements to address the key territorial challenges for urban, rural, coastal and fisheries areas, the demographic challenges of regions or specific needs of geographical areas which suffer from severe and permanent natural or demographic handicaps as referred to in Article 174 TFEU, and the specific challenges of outermost regions within the meaning of Article 349 TFEU;
- (f) priority areas for cooperation activities under the ESI Funds, where appropriate, taking account of macro-regional and sea basin strategies.

*Article 12***Review**

Where there are major changes in the social and economic situation in the Union, or changes are made to the Union strategy for smart, sustainable and inclusive growth, the Commission may submit a proposal to review the CSF, or the European Parliament or the Council, acting in accordance with Articles 225 or 241 TFEU respectively, may request the Commission to submit such a proposal.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 in order to supplement or amend Sections 4 and 7 of Annex I where it is necessary to take account of changes in the Union policies or instruments referred to in Section 4 or changes in the cooperation activities referred to in Section 7 or to take account of the introduction of new Union policies, instruments or cooperation activities.

*Article 13***Guidance for beneficiaries**

1. The Commission shall prepare guidance on how to effectively access and use the ESI Funds, and on how to exploit complementarities with other instruments of relevant Union policies.
2. The guidance shall be drawn up by 30 June 2014 and shall provide, for each thematic objective, an overview of the available relevant instruments at Union level with detailed sources of information, examples of good practices for combining available funding instruments within and across policy areas, a description of relevant authorities and bodies involved in the management of each instrument, a checklist for potential beneficiaries to help them to identify the most appropriate funding sources.
3. The guidance shall be made public on the websites of the relevant Directorate Generals of the Commission. The Commission and managing authorities, acting in accordance with the Fund-specific rules, and in cooperation with the Committee of the Regions, shall ensure dissemination of the guidance to potential beneficiaries.

*CHAPTER II***Partnership Agreement***Article 14***Preparation of the Partnership Agreement**

1. Each Member State shall prepare a Partnership Agreement for the period from 1 January 2014 to 31 December 2020.
2. The Partnership Agreement shall be drawn up by Member States in cooperation with the partners referred to in Article 5. The Partnership Agreement shall be prepared in dialogue with the Commission. The Member States shall draw up the Partnership Agreement based on procedures that are transparent for the public, and in accordance with their institutional and legal framework.
3. The Partnership Agreement shall cover all support from the ESI Funds in the Member State concerned.
4. Each Member State shall submit its Partnership Agreement to the Commission by 22 April 2014.
5. Where one or more of the Fund-specific Regulations does not enter into force or is not expected to enter into force by 22 February 2014, the Partnership Agreement submitted by a Member State as referred to in paragraph 4 shall not be required to contain the elements referred to in points (a)(ii), (iii), (iv) and (vi) of Article 15(1) for the ESI Fund affected by such a delay or expected delay in the entry into force of the Fund-specific Regulation.

## Article 15

**Content of the Partnership Agreement**

1. The Partnership Agreement shall set out:

(a) arrangements to ensure alignment with the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, including:

(i) an analysis of disparities, development needs and growth potential with reference to the thematic objectives and the territorial challenges, and taking account of the National Reform Programme, where appropriate, and relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU;

(ii) a summary of the ex ante evaluations of the programmes, or key findings of the ex ante evaluation of the Partnership Agreement, where the latter evaluation is undertaken by the Member State at its own initiative;

(iii) selected thematic objectives, and for each of the selected thematic objectives a summary of the main results expected for each of the ESI Funds;

(iv) the indicative allocation of support by the Union by thematic objective at national level for each of the ESI Funds, as well as the total indicative amount of support envisaged for climate change objectives;

(v) the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds;

(vi) the list of the programmes under the ERDF, the ESF and the Cohesion Fund, except those under the European territorial cooperation goal, and of the programmes of the EAFRD and the EMFF, with the respective indicative allocations by ESI Fund and by year;

(vii) information on the allocation related to the performance reserve, broken down by ESI Fund and, where appropriate, by category of region, and on the amounts excluded for the purpose of calculating the performance reserve in accordance with Article 20;

(b) arrangements to ensure effective implementation of the ESI Funds, including:

(i) arrangements, in line with the institutional framework of the Member States, that ensure coordination between the ESI Funds and other Union and national funding instruments and with the EIB;

(ii) the information required for ex ante verification of compliance with the rules on additionality as they are defined in Part Three;

(iii) a summary of the assessment of the fulfilment of applicable ex ante conditionalities in accordance with Article 19 and Annex XI at national level and, in the event that the applicable ex ante conditionalities are not fulfilled, of the actions to be taken, the bodies responsible and the timetable for implementation of those actions;

(iv) the methodology and mechanisms to ensure consistency in the functioning of the performance framework in accordance with Article 21;

(v) an assessment of whether there is a need to reinforce the administrative capacity of the authorities involved in the management and control of the programmes and, where appropriate, of beneficiaries as well as, where necessary, a summary of actions to be taken for that purpose;

(vi) a summary of the actions planned in the programmes, including an indicative timetable for achievement of a reduction in the administrative burden on beneficiaries;

(c) arrangements for the partnership principle as referred in Article 5;

(d) an indicative list of the partners referred to in Article 5 and a summary of the actions taken to involve them in accordance with Article 5 and of their role in the preparation of the Partnership Agreement and the progress report as referred to in Article 52.

2. The Partnership Agreement shall also indicate:

(a) an integrated approach to territorial development supported by the ESI Funds or a summary of the integrated approaches to territorial development based on the content of the programmes, setting out:

(i) the arrangements to ensure an integrated approach to the use of the ESI Funds for the territorial development of specific subregional areas, in particular the implementation arrangements for Articles 32, 33 and 36 accompanied by the principles for identifying the urban areas where integrated actions for sustainable urban development are to be implemented;

- (ii) the main priority areas for cooperation under the ESI Funds, taking account, where appropriate, of macro-regional strategies and sea basin strategies;
  - (iii) where appropriate, an integrated approach to addressing the specific needs of geographical areas most affected by poverty or of target groups at highest risk of discrimination or social exclusion, with special regard to marginalised communities, persons with disabilities, the long term unemployed and young people not in employment, education or training;
  - (iv) where appropriate, an integrated approach to address the demographic challenges of regions or specific needs of geographical areas which suffer from severe and permanent natural or demographic handicaps as referred to in Article 174 TFEU;
- (b) arrangements to ensure efficient implementation of the ESI Funds, including an assessment of the existing systems for electronic data exchange, and a summary of the actions planned to gradually permit all exchanges of information between beneficiaries, and authorities responsible for management and control of programmes, to be carried out by electronic data exchange.

#### Article 16

##### **Adoption and amendment of the Partnership Agreement**

1. The Commission shall assess the consistency of the Partnership Agreement with this Regulation taking account of the National Reform Programme, where appropriate, and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148 (4) TFEU, as well as of the ex ante evaluations of the programmes, and shall make observations within three months of the date of submission by the Member State of its Partnership Agreement. The Member State concerned shall provide all necessary additional information and, where appropriate, shall revise the Partnership Agreement.
2. The Commission shall adopt a decision, by means of implementing acts, approving the elements of the Partnership Agreement falling under Article 15(1) and those falling under Article 15(2) in the event that a Member State has made use of the provisions of Article 96(8), for the elements requiring a Commission decision under Article 96(10), no later than four months after the date of submission by the Member State of its Partnership Agreement, provided that any observations made by the Commission have been adequately taken into account. The Partnership Agreement shall not enter into force before 1 January 2014.
3. The Commission shall prepare a report on the outcome of the negotiations concerning the Partnership Agreements and the

programmes, including an overview of the key issues, for each Member State, by 31 December 2015. That report shall be submitted to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions simultaneously.

4. Where a Member State proposes an amendment to the elements of the Partnership Agreement covered by the Commission decision as referred to in paragraph 2, the Commission shall carry out an assessment in accordance with paragraph 1 and, where appropriate, shall adopt a decision, by means of implementing acts, approving the amendment within three months of the date of submission of the proposal for amendment by the Member State.

5. Where a Member State amends elements of the Partnership Agreement not covered by the Commission decision as referred to in paragraph 2, it shall notify the Commission thereof within one month of the date of the decision to make the amendment.

#### Article 17

##### **Adoption of the revised Partnership Agreement in the event of delay in the entry into force of a Fund-specific Regulation**

1. Where Article 14(5) applies, each Member State shall submit to the Commission a revised Partnership Agreement that includes the elements missing from the Partnership Agreement for the ESI Fund concerned, within two months of the date of entry into force of the Fund-specific Regulation that was subject to the delay.
2. The Commission shall assess the consistency of the revised Partnership Agreement with this Regulation in accordance with Article 16(1) and shall adopt a decision, by means of implementing acts, approving the revised Partnership Agreement in accordance with Article 16(2).

#### CHAPTER III

##### **Thematic concentration, ex ante conditionalities and performance review**

#### Article 18

##### **Thematic concentration**

Member States shall concentrate support, in accordance with the Fund-specific rules, on interventions that bring the greatest added value in relation to the Union strategy for smart, sustainable and inclusive growth taking into account the key territorial challenges of the various types of territories in line with the CSF, the challenges identified in the National Reform Programmes, where appropriate, and relevant country-specific recommendations under Article 121(2) TFEU and the relevant Council recommendations adopted under Article 148(4) TFEU. Provisions on thematic concentration under the Fund-specific rules shall not apply to technical assistance.

*Article 19***Ex ante conditionalities**

1. Member States shall assess in accordance with their institutional and legal framework and in the context of the preparation of the programmes and, where appropriate, the Partnership Agreement, whether the ex ante conditionalities laid down in the respective Fund-specific rules and the general ex ante conditionalities set out in Part II of Annex XI are applicable to the specific objectives pursued within the priorities of their programmes and whether the applicable ex ante conditionalities are fulfilled.

Ex ante conditionalities shall apply only to the extent and provided that they comply with the definition laid down in point (33) of Article 2 regarding the specific objectives pursued within the priorities of the programme. The assessment of applicability shall, without prejudice to the definition laid down in point (33) of Article 2, take account of the principle of proportionality in accordance with Article 4(5) having regard to the level of support allocated, where appropriate. The assessment of fulfilment shall be limited to the criteria laid down in the Fund-specific rules and in Part II of Annex XI.

2. The Partnership Agreement shall set out a summary of the assessment of the fulfilment of applicable ex ante conditionalities at national level and for those which, pursuant to the assessment referred to in paragraph 1, are not fulfilled at the date of submission of the Partnership Agreement, the actions to be taken, the bodies responsible and the timetable for the implementation of those actions. Each programme shall identify which of the ex ante conditionalities laid down in the relevant Fund-specific rules and the general ex ante conditionalities set out in Part II of Annex XI are applicable to it and, which of them, pursuant to the assessment referred to in paragraph 1, are fulfilled at the date of submission of the Partnership Agreement and programmes. Where the applicable ex ante conditionalities are not fulfilled, the programme shall contain a description of the actions to be taken, the bodies responsible and the timetable for their implementation. Member States shall fulfil those ex ante conditionalities not later than 31 December 2016 and report on their fulfilment not later than in the annual implementation report in 2017 in accordance with Article 50(4) or the progress report in 2017 in accordance with point (c) of Article 52(2).

3. The Commission shall assess the consistency and the adequacy of the information provided by the Member State on the applicability of ex ante conditionalities and on the fulfilment of applicable ex ante conditionalities in the framework of its assessment of the programmes and, where appropriate, of the Partnership Agreement.

That assessment of applicability by the Commission shall, in accordance with Article 4(5), take account of the principle of proportionality having regard to the level of support allocated, where appropriate. The assessment of fulfilment by the Commission shall be limited to the criteria laid down in the Fund-specific rules and in Part II of Annex XI, and shall respect national and regional competences to decide on the specific and adequate policy measures including the content of strategies.

4. In the event of disagreement between the Commission and a Member State on the applicability of an ex ante conditionality to the specific objective of the priorities of a programme or its fulfilment, both the applicability in accordance with the definition in point (33) of Article 2 and the non-fulfilment shall be proven by the Commission.

5. The Commission may decide, when adopting a programme, to suspend all or part of interim payments to the relevant priority of that programme pending the completion of actions referred to in paragraph 2 where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the priority concerned. The failure to complete actions to fulfil an applicable ex ante conditionality which has not been fulfilled at the date of submission of the Partnership Agreement and the respective programmes, by the deadline set out in paragraph 2, shall constitute a ground for suspending interim payments by the Commission to the priorities of the programme concerned that are affected. In both cases, the scope of suspension shall be proportionate, taking into account the actions to be taken and the funds at risk.

6. Paragraph 5 shall not apply in the event of agreement between the Commission and the Member State on the non-applicability of an ex ante conditionality or on the fact that an applicable ex ante conditionality has been fulfilled, as indicated by the approval of the programme and the Partnership Agreement, or in the absence of Commission observations within 60 days of the submission of the relevant report referred to in paragraph 2.

7. The Commission shall without delay lift the suspension of interim payments for a priority where a Member State has completed actions relating to the fulfilment of ex ante conditionalities applicable to the programme concerned and which had not been fulfilled at the time of the decision of the Commission on the suspension. It shall also without delay lift the suspension where, following amendment of the programme related to the priority concerned, the ex ante conditionality concerned is no longer applicable.

8. Paragraphs 1 to 7 shall not apply to programmes under the European territorial cooperation goal.

*Article 20***Performance reserve**

6 % of the resources allocated to the ERDF, ESF and the Cohesion Fund under the Investment for Growth and Jobs goal referred to in point (a) of Article 89(2) of this Regulation, as well as to the EAFRD and to measures financed under shared management in accordance with the EMFF Regulation shall constitute a performance reserve which shall be established in the Partnership Agreement and programmes and allocated to specific priorities in accordance with Article 22 of this Regulation.

The following resources are excluded for the purpose of calculating the performance reserve:

- (a) resources allocated to the YEI as defined in the operational programme in accordance with Article 18 of the ESF Regulation;
- (b) resources allocated to technical assistance at the initiative of the Commission;
- (c) resources transferred from the first pillar of the CAP to the EAFRD under Articles 7(2) and 14(1) of Regulation (EU) No 1307/2013;
- (d) transfers to the EAFRD in application of Articles 10b, 136 and 136b of Council Regulation (EC) No 73/2009 in respect of calendar years 2013 and 2014 respectively;
- (e) resources transferred to the CEF from the Cohesion Fund in accordance with Article 92(6) of this Regulation;
- (f) resources transferred to the Fund for European Aid for the Most Deprived in accordance with Article 92(7) of this Regulation;
- (g) resources allocated for innovative actions for sustainable urban development in accordance with Article 92(8) of this Regulation.

#### Article 21

##### Performance review

1. The Commission, in cooperation with the Member States, shall undertake a review of the performance of the programmes in each Member State in 2019 (the 'performance review'), with reference to the performance framework set out in the respective programmes. The method for establishing the performance framework is set out in Annex II.
2. The performance review shall examine the achievement of the milestones of the programmes at the level of priorities, on the basis of the information and the assessments presented in the annual implementation report submitted by the Member States in the year 2019.

#### Article 22

##### Application of the performance framework

1. The performance reserve shall constitute between 5 and 7 % of the allocation to each priority within a programme, with the exception of priorities dedicated to technical assistance and programmes dedicated to financial instruments in accordance with Article 39. The total amount of the performance reserve allocated by ESI Fund and category of region shall be 6 %. The amounts corresponding to the performance reserve shall be set

out in the programmes broken down by priority and, where appropriate, by ESI Fund and by category of region.

2. On the basis of the performance review, the Commission shall within two months of the receipt of the respective annual implementation reports in the year 2019 adopt a decision, by means of implementing acts, to determine for each ESI Fund and Member State, the programmes and priorities which have achieved their milestones, setting out that information by ESI Fund and by category of region, where a priority covers more than one ESI Fund or category of region.

3. The performance reserve shall be allocated only to programmes and priorities which have achieved their milestones. Where priorities have achieved their milestones the amount of the performance reserve established for the priority shall be considered to be definitively allocated on the basis of the Commission decision referred to in paragraph 2.

4. Where priorities have not achieved their milestones, the Member State shall propose the reallocation of the corresponding amount of the performance reserve to priorities set out in the Commission decision referred to in paragraph 2, and other amendments to the programme which result from the reallocation of the performance reserve, no later than three months after the adoption of the decision referred to in paragraph 2.

The Commission shall approve, in accordance with Article 30(3) and (4), the amendment of the programmes concerned. Where a Member State fails to submit the information in accordance with Article 50(5) and (6), the performance reserve for the programmes or the priorities concerned shall not be allocated to the programmes or the priorities concerned.

5. The Member State's proposal to reallocate the performance reserve shall be consistent with thematic concentration requirements and minimum allocations set out in this Regulation and the Fund-specific rules. By way of derogation, where one or more of the priorities linked to thematic concentration requirements or minimum allocations have not achieved their milestones, the Member State may propose a reallocation of the reserve, which does not comply with the aforementioned requirements and minimum allocations.

6. Where there is evidence, resulting from the performance review for a priority, that there has been a serious failure in achieving that priority's milestones relating only to the financial and output indicators and key implementation steps set out in the performance framework and that that failure is due to clearly identified implementation weaknesses, which the Commission had previously communicated pursuant to Article 50(8) following close consultations with the Member State concerned, and that Member State has failed to take the necessary corrective action to address such weaknesses, the Commission may, not earlier than five months after such communication, suspend all or part of an interim payment of a priority of a programme in accordance with the procedure laid down in the Fund-specific rules.

The Commission shall without delay lift the suspension of interim payments when the Member State has taken the necessary corrective action. Where the corrective action concerns the transfer of financial allocations to other programmes or priorities, which have achieved their milestones, the Commission shall approve, by means of an implementing act, the necessary amendment of the programmes concerned in accordance with Article 30(2). By way of derogation from Article 30(2), in such case the Commission shall decide on the amendment no later than two months after the submission of the Member State request for amendment.

7. Where the Commission, based on the examination of the final implementation report of the programme, establishes a serious failure to achieve the targets relating only to financial indicators, output indicators and key implementation steps set out in the performance framework due to clearly identified implementation weaknesses, which the Commission had previously communicated pursuant to Article 50(8) following close consultations with the Member State concerned, and the Member State has failed to take the necessary corrective action to address such weaknesses, the Commission may notwithstanding Article 85 apply financial corrections in respect of the priorities concerned in accordance with the Fund-specific rules.

When applying financial corrections, the Commission shall take into account, with due regard to the principle of proportionality, the absorption level and external factors contributing to the failure.

Financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned or because of reasons of force majeure seriously affecting implementation of the priorities concerned.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 to establish detailed rules on criteria for determining the level of financial correction to be applied.

The Commission shall adopt implementing acts, laying down the detailed arrangements to ensure a consistent approach for determining the milestones and targets in the performance framework for each priority and for assessing the achievement of the milestones and targets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### CHAPTER IV

### *Measures linked to sound economic governance*

#### *Article 23*

### **Measures linking effectiveness of ESI Funds to sound economic governance**

1. The Commission may request a Member State to review and propose amendments to its Partnership Agreement and

relevant programmes, where this is necessary to support the implementation of relevant Council Recommendations or to maximise the growth and competitiveness impact of the ESI Funds in Member States receiving financial assistance.

Such a request may be made for the following purposes:

- (a) to support the implementation of a relevant country-specific recommendation adopted in accordance with Article 121(2) TFEU and of a relevant Council recommendation adopted in accordance with Article 148(4) TFEU, addressed to the Member State concerned;
- (b) to support the implementation of relevant Council Recommendations addressed to the Member State concerned and adopted in accordance with Articles 7(2) or 8(2) of Regulation (EU) No 1176/2011<sup>(1)</sup> of the European Parliament and of the Council provided that these amendments are deemed necessary to help correct the macro-economic imbalances; or
- (c) to maximise the growth and competitiveness impact of the available ESI Funds, if a Member State meets one of the following conditions:
  - (i) Union financial assistance is made available to it under Council Regulation (EU) No 407/2010<sup>(2)</sup>;
  - (ii) financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002<sup>(3)</sup>;
  - (iii) financial assistance is made available to it that triggers a macroeconomic adjustment programme in accordance with Regulation (EU) No 472/2013 of the European Parliament and of the Council<sup>(4)</sup> or that triggers a decision of the Council in accordance with Article 136(1) TFEU.

For the purposes of point (b) of the second subparagraph, each of those conditions shall be deemed to be satisfied where such assistance has been made available to the Member State before or after 21 December 2013 and remains available to it.

<sup>(1)</sup> Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ L 306, 23.11.2011, p. 25).

<sup>(2)</sup> Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

<sup>(4)</sup> Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.05.2013, p. 1).

2. A request by the Commission to a Member State in accordance with paragraph 1 shall be justified, with reference to the need to support the implementation of the relevant recommendations or to maximise the growth and competitiveness impact of the ESI Funds as appropriate, and shall indicate the programmes or priorities which it considers are concerned and the nature of the amendments expected. Such a request shall not be made before 2015 or after 2019, nor in relation to the same programmes in two consecutive years.

3. The Member State shall submit its response to the request referred to in paragraph 1 within two months of its receipt, setting out the amendments it considers necessary in the Partnership Agreement and programmes, the reasons for such amendments, identifying the programmes concerned and outlining the nature of the amendments proposed and their expected effects on the implementation of recommendations and on the implementation of the ESI Funds. If necessary, the Commission shall make observations within one month of the receipt of that response.

4. The Member State shall submit a proposal to amend the Partnership Agreement and the relevant programmes within two months of the date of submission of the response referred to in paragraph 3.

5. Where the Commission has not submitted observations or where the Commission is satisfied that any observations submitted have been duly taken into account, the Commission shall adopt a decision approving the amendments to the Partnership Agreement and the relevant programmes without undue delay and in any event not later than three months after their submission by the Member State in accordance with paragraph 3.

6. Where the Member State fails to take effective action in response to a request made in accordance with paragraph 1, within the deadlines set out in paragraphs 3 and 4, the Commission may, within three months following its observations under paragraph 3 or following the submission of the proposal of the Member State under paragraph 4, propose to the Council that it suspend part or all of the payments for the programmes or priorities concerned. In its proposal, the Commission shall set out the grounds for concluding that the Member State has failed to take effective action. In making its proposal, the Commission shall take account of all relevant information, and shall give due consideration to any elements arising from and opinions expressed through the structured dialogue under paragraph 15.

The Council shall decide on that proposal, by means of an implementing act. That implementing act shall only apply with respect to requests for payment submitted after the date of the adoption of that implementing act.

7. The scope and level of the suspension of payments imposed in accordance with paragraph 6, shall be proportionate and effective, and respect equality of treatment between Member

States, in particular with regard to the impact of the suspension on the economy of the Member State concerned. The programmes to be suspended shall be determined on the basis of the needs identified in the request referred to in paragraphs 1 and 2.

The suspension of payments shall not exceed 50 % of the payments of each of the programmes concerned. The decision may provide for an increase in the level of the suspension up to 100 % of payments if the Member State fails to take effective action in response to a request made in accordance with paragraph 1, within three months of the decision to suspend payments referred to in paragraph 6.

8. Where the Member State has proposed amendments to the Partnership Agreement and the relevant programmes as requested by the Commission, the Council acting on a proposal from the Commission shall decide on the lifting of the suspension of payments.

9. The Commission shall make a proposal to the Council to suspend part or all of the commitments or payments for the programmes of a Member State in the following cases:

- (a) where the Council decides in accordance with Article 126(8) or Article 126(11) TFEU that a Member State has not taken effective action to correct its excessive deficit;
- (b) where the Council adopts two successive recommendations in the same imbalance procedure, in accordance with Article 8(3) of Regulation (EU) No 1176/2011 on the grounds that a Member State has submitted an insufficient corrective action plan;
- (c) where the Council adopts two successive decisions in the same imbalance procedure in accordance with Article 10(4) of Regulation (EU) No 1176/2011 establishing non-compliance by a Member State on the grounds that it has not taken the recommended corrective action;
- (d) where the Commission concludes that a Member State has not taken measures to implement the adjustment programme referred to in Regulation (EU) No 407/2010 or Regulation (EC) No 332/2002 and as a consequence decides not to authorise the disbursement of the financial assistance granted to that Member State;
- (e) where the Council decides that a Member State does not comply with the macro-economic adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013, or with the measures requested by a Council decision adopted in accordance with Article 136(1) TFEU.

In making its proposal, the Commission shall respect the provisions of paragraph 11 and shall take account of all relevant information in that regard, and it shall give due consideration to any elements arising from and opinions expressed through the structured dialogue under paragraph 15.

Priority shall be given to the suspension of commitments: payments shall be suspended only when immediate action is sought and in the case of significant non-compliance. The suspension of payments shall apply to requests for payment submitted for the programmes concerned after the date of the decision to suspend.

10. A proposal by the Commission referred to in paragraph 9 in relation to the suspension of commitments shall be deemed adopted by the Council unless the Council decides, by means of an implementing act, to reject such a proposal by qualified majority within one month of the submission of the Commission proposal. The suspension of commitments shall apply to the commitments from the ESI Funds for the Member State concerned from 1 January of the year following the decision to suspend.

The Council shall adopt a decision, by means of an implementing act, on a proposal by the Commission referred to in paragraph 9 in relation to the suspension of payments.

11. The scope and level of the suspension of commitments or payments to be imposed on the basis of paragraph 10, shall be proportionate, respect the equality of treatment between Member States and take into account the economic and social circumstances of the Member State concerned, in particular the level of unemployment of the Member State concerned in relation to the Union average and the impact of the suspension on the economy of the Member State concerned. The impact of suspensions on programmes of critical importance to address adverse economic or social conditions shall be a specific factor to be taken into account.

Detailed provisions for determining the scope and level of suspensions are set out in Annex III.

The suspension of commitments shall be subject to the lower of the following ceilings:

- (a) A maximum of 50 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-compliance with an excessive deficit procedure as referred to in point (a) of the first subparagraph of paragraph 9 and a maximum 25 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-compliance relating to a corrective action plan under an excessive imbalances procedure as referred to in point (b) of the first subparagraph of paragraph 9 or non-compliance with the recommended corrective action pursuant to an excessive imbalances procedure as referred to in point (c) of the first subparagraph of paragraph 9.

The level of the suspension shall increase gradually up to a maximum of 100 % of the commitments relating to the next financial year for the ESI Funds in the case of an excessive deficit procedure and up to 50 % of the commitments relating to the next financial year for the

ESI Funds in the case of an excessive imbalance procedure, in line with the seriousness of the non-compliance;

- (b) a maximum of 0,5 % of nominal GDP applying in the first case of non-compliance with an excessive deficit procedure as referred to in point (a) of the first subparagraph of paragraph 9 and a maximum of 0,25 % of nominal GDP applying in the first case of non-compliance relating to a corrective action plan under an excessive imbalances procedure as referred to in point (b) of the first subparagraph of paragraph 9 or non-compliance with recommended corrective action under an excessive imbalances procedure as referred to in point (c) of the first subparagraph of paragraph 9.

If non-compliance relating to corrective actions referred to in points (a), (b) and (c) of the first subparagraph of paragraph 9 persists, the percentage of that GDP cap shall be gradually increased up to:

- a maximum of 1 % of nominal GDP applying in the event of persistent non-compliance with an excessive deficit procedure in accordance with point (a) of the first subparagraph of paragraph 9; and
- a maximum of 0,5 % of nominal GDP applying in the event of persistent non-compliance with an excessive imbalance procedure in accordance with point (b) or (c) of the first subparagraph of paragraph 9, in line with the seriousness of the non-compliance;

- (c) a maximum of 50 % of the commitments relating to the next financial year for the ESI Funds or a maximum of 0,5 % of nominal GDP in the first case of non-compliance as referred to in points (d) and (e) of the first subparagraph of paragraph 9.

In determining the level of the suspension and whether to suspend commitments or payments, the stage of the programme cycle shall be taken into account having regard in particular to the period remaining for using the funds following the re-budgeting of suspended commitments.

12. Without prejudice to de-commitment rules set out in Articles 86 to 88 the Commission shall lift the suspension of commitments, without delay, in the following cases:

- (a) where the excessive deficit procedure is held in abeyance in accordance with Article 9 of Council Regulation (EC) No 1467/97<sup>(1)</sup> or the Council has decided in accordance with Article 126(12) TFEU to abrogate the decision on the existence of an excessive deficit;

<sup>(1)</sup> Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).



- (b) where the Council has endorsed the corrective action plan submitted by the Member State concerned in accordance with Article 8(2) of Regulation (EU) No 1176/2011 or the excessive imbalance procedure is placed in a position of abeyance in accordance with Article 10(5) of that Regulation or the Council has closed the excessive imbalance procedure in accordance with Article 11 of that Regulation;
- (c) where the Commission has concluded that the Member State concerned has taken adequate measures to implement the adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013 or the measures requested by a decision of the Council in accordance with Article 136(1) TFEU.

When lifting the suspension of commitments, the Commission shall re-budget the suspended commitments in accordance with Article 8 of Council Regulation (EU, Euratom) No 1311/2013.

A decision concerning the lifting of the suspension of payments shall be taken by the Council on a proposal from the Commission where the applicable conditions set out in points (a), (b) and (c) of the first subparagraph are fulfilled.

13. Paragraphs 6 to 12 shall not apply to the United Kingdom in so far as the suspension of commitments or of payments relate to matters covered by points (a), (b) and (c)(iii) of the second subparagraph of paragraph 1 or points (a), (b) or (c) of the first subparagraph of paragraph 9.

14. This Article shall not apply to programmes under the European territorial cooperation goal.

15. The Commission shall keep the European Parliament informed of the implementation of this Article. In particular the Commission shall, when one of the conditions set out in paragraph 6 or points (a) to (e) of the first subparagraph of paragraph 9 is fulfilled for a Member State, immediately inform the European Parliament and provide details of the ESI Funds and programmes which could be subject to a suspension of commitments or payments.

The European Parliament may invite the Commission for a structured dialogue on the application of this Article, having regard in particular to the transmission of the information referred to in the first sub-paragraph.

The Commission shall transmit the proposal for suspension of commitments or payments or the proposal to lift such a suspension to the European Parliament and the Council immediately after its adoption. The European Parliament may invite the Commission to explain the reasons for its proposal.

16. In 2017, the Commission shall carry out a review of the application of this Article. To this end, the Commission shall prepare a report which it shall transmit to the European Parliament and the Council, accompanied where necessary by a legislative proposal.

17. Where there are major changes in the social and economic situation in the Union, the Commission may submit a proposal to review the application of this Article, or the European Parliament or the Council, acting in accordance with Articles 225 or 241 TFEU respectively, may request the Commission to submit such a proposal.

#### Article 24

#### **Increase in payments for Member State with temporary budgetary difficulties**

1. On the request of a Member State, interim payments may be increased by 10 percentage points above the co-financing rate applicable to each priority for the ERDF, ESF and the Cohesion Fund or to each measure for the EAFRD and the EMFF. If a Member State meets one of the following conditions after 21 December 2013, the increased rate, which may not exceed 100 %, shall apply to its requests for payments for the period until 30 June 2016:

- (a) where the Member State concerned receives a loan from the Union under Council Regulation (EU) No 407/2010;
- (b) where the Member State concerned receives medium-term financial assistance in accordance with Regulation (EC) No 332/2002 conditional on the implementation of a macro-economic adjustment programme;
- (c) where financial assistance is made available to the Member State concerned conditional on the implementation of a macroeconomic adjustment programme as specified in Regulation (EU) No 472/2013.

This paragraph shall not apply to programmes under the ETC Regulation.

2. Notwithstanding paragraph 1, Union support through interim payments and payments of the final balance shall not be higher than the public support or the maximum amount of support from the ESI Funds for each priority for the ERDF, ESF and the Cohesion Fund, or for each measure for the EAFRD and the EMFF, as laid down in the decision of the Commission approving the programme.

3. The Commission shall examine the application of paragraphs 1 and 2 and shall submit to the European Parliament and the Council a report with its assessment and, if necessary, a legislative proposal before 30 June 2016.

*Article 25***Management of technical assistance for Member States with temporary budgetary difficulties**

1. On the request of a Member State with temporary budgetary difficulties which meets the conditions set out in Article 24(1), a part of the resources provided for under Article 59 and programmed in accordance with Fund-specific rules may, in agreement with the Commission, be transferred to technical assistance at the initiative of the Commission for implementation of measures in relation to the Member State concerned in accordance with point (k) of the third subparagraph of Article 58(1) through direct or indirect management.

2. The resources referred to in paragraph 1 shall be additional to the amounts established in accordance with the ceilings set out in the Fund-specific rules for technical assistance at the initiative of the Commission. Where a ceiling on technical assistance at the initiative of the Member State is set out in the Fund-specific rules, the amount to be transferred shall be included for the purposes of the calculation of compliance with that ceiling.

3. A Member State shall request the transfer referred to in paragraph 2 for a calendar year in which it meets the conditions set out in Article 24(1) by 31 January of the year in which a transfer is to be made. The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments shall be made to the Partnership Agreement in accordance with Article 30 (2) which shall set out the total amount transferred each year to the Commission.

Where a Member States meets the conditions set out in Article 24(1) on 1 January 2014, it may transmit the request for that year at the same time as the submission of its Partnership Agreement, which shall set out the amount to be transferred to technical assistance at the initiative of the Commission.

## TITLE III

## PROGRAMMING

## CHAPTER I

**General provisions on the ESI Funds***Article 26***Preparation of programmes**

1. The ESI Funds shall be implemented through programmes in accordance with the Partnership Agreement. Each programme shall cover the period from 1 January 2014 to 31 December 2020.

2. Programmes shall be drawn up by Member States or any authority designated by them, in cooperation with the partners referred to in Article 5. Member States shall draw up the programmes based on procedures that are transparent for the public, in accordance with their institutional and legal framework.

3. The Member States and the Commission shall cooperate to ensure effective coordination in the preparation and implementation of programmes for the ESI Funds, including, where appropriate, multi-fund programmes for the Funds, taking account of the proportionality principle.

4. Programmes shall be submitted by the Member States to the Commission within three months of the submission of the Partnership Agreement. European territorial cooperation programmes shall be submitted by 22 September 2014. All programmes shall be accompanied by the ex ante evaluation as set out in Article 55.

5. Where one or more of the Fund-specific Regulations for the ESI Funds enters into force between 22 February 2014 and 22 June 2014, the programme or programmes supported by the ESI Fund affected by the delay in the entry into force of the Fund-specific Regulation shall be submitted within three months of the submission of the revised Partnership Agreement referred to in Article 17(1).

6. Where one or more of the Fund-specific Regulations for the ESI Funds enters into force later than on 22 June 2014, the programme or programmes supported by the ESI Fund affected by the delay in the entry into force of the Fund-specific Regulation shall be submitted within three months of the date of entry into force of the Fund-specific Regulation that was subject to the delay.

*Article 27***Content of programmes**

1. Each programme shall set out a strategy for the programme's contribution to the Union strategy for smart, sustainable and inclusive growth consistent with this Regulation, the Fund-specific rules, and with the content of the Partnership Agreement.

Each programme shall include arrangements to ensure effective, efficient and coordinated implementation of the ESI Funds and actions to achieve a reduction of the administrative burden on beneficiaries.

2. Each programme shall define priorities setting out specific objectives, financial appropriations of support from the ESI Funds and corresponding national co-financing, including amounts related to the performance reserve, which may be public or private in accordance with the Fund-specific rules.

3. Where Member States and regions participate in macro-regional strategies or sea basin strategies, the relevant programme, in accordance with the needs of the programme area as identified by the Member State, shall set out the contribution of the planned interventions to those strategies.

4. Each priority shall set out indicators and corresponding targets expressed in qualitative or quantitative terms, in accordance with the Fund-specific rules, in order to assess

progress in programme implementation aimed at achievement of objectives as the basis for monitoring, evaluation and review of performance. Those indicators shall include:

- (a) financial indicators relating to expenditure allocated;
- (b) output indicators relating to the operations supported;
- (c) result indicators relating to the priority concerned.

For each ESI Fund, the Fund-specific rules shall set out common indicators and may set out provisions related to programme-specific indicators.

5. Each programme, except those which cover exclusively technical assistance, shall include a description, in accordance with the Fund-specific rules, of the actions to take into account the principles set out in Articles 5, 7 and 8.

6. Each programme, except those where technical assistance is undertaken under a specific programme, shall set out the indicative amount of support to be used for climate change objectives, based on the methodology referred to in Article 8.

7. Member States shall draft the programme in accordance with the Fund-specific rules.

#### Article 28

##### **Specific provisions on the content of programmes dedicated to joint instruments for uncapped guarantees and securitisation providing capital relief implemented by the EIB**

1. By way of derogation from Article 27, the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) shall include:

- (a) the elements set out under the first subparagraph of Article 27(1), and under paragraphs 2, 3 and 4 of that Article as regards the principles set out under Article 5;
- (b) an identification of the bodies referred to under Articles 125, 126 and 127 of this Regulation and Article 65(2) of the EAFRD Regulation as relevant for the Fund concerned;
- (c) for each ex ante conditionality, established in accordance with Article 19 and Annex XI, which is applicable to the programme, an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the Partnership Agreement and programme, and where ex ante

conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality, the bodies responsible and a timetable for such actions in accordance with the summary submitted in the Partnership Agreement.

2. By way of derogation from Article 55, the ex ante assessment referred to in point (a) of the first subparagraph of Article 39(4) shall be considered as the ex ante evaluation of such programmes.

3. For the purposes of programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation, Article 6(2) and Article 59(5) and (6) of the EAFRD Regulation shall not apply. In addition to the elements referred to in paragraph 1 of this Article, only the provisions set out in points (c)(i), (f), (h), (i) and (m)(i) to (iii) of Article 8(1) of the EAFRD Regulation shall apply for programmes under the EAFRD.

#### Article 29

##### **Procedure for the adoption of programmes**

1. The Commission shall assess the consistency of programmes with this Regulation and with the Fund-specific rules, their effective contribution to the selected thematic objectives and to the Union priorities specific to each ESI Fund, and also the consistency with the Partnership Agreement, taking account of the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU as well as of the ex ante evaluation. The assessment shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources.

2. By way of derogation from paragraph 1, the Commission shall not need to assess the consistency of the dedicated operational programmes for the YEI referred to in point (a) of the second paragraph of Article 18 of the ESF Regulation and dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation with the Partnership Agreement in the absence of the submission by the Member State of its Partnership Agreement at the date of submission of such dedicated programmes.

3. The Commission shall make observations within three months of the date of submission of the programme. The Member State shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed programme.

4. In accordance with the Fund-specific rules, the Commission shall approve each programme no later than six months following its submission by the Member State concerned, provided that any observations made by the Commission have been adequately taken into account, but not before 1 January 2014 or before adoption by the Commission of a decision approving the Partnership Agreement.

By way of derogation from the requirement referred to in the first subparagraph, programmes under the European territorial cooperation goal may be approved by the Commission before the adoption of the decision approving the Partnership Agreement and dedicated operational programmes for the YEI referred to in point (a) of the second paragraph of Article 18 of the ESF Regulation and dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation may be approved by the Commission before the submission of the Partnership Agreement.

#### Article 30

##### Amendment of programmes

1. Requests for amendment of programmes submitted by a Member State shall be duly justified and shall in particular set out the expected impact of the changes to the programme on achieving the Union strategy for smart, sustainable and inclusive growth and the specific objectives defined in the programme, taking account of this Regulation and the Fund-specific rules, the horizontal principles referred to in Articles 5, 7 and 8, as well as of the Partnership Agreement. They shall be accompanied by the revised programme.

2. The Commission shall assess the information provided in accordance with paragraph 1, taking account of the justification provided by the Member State. The Commission may make observations within one month of the submission of the revised programme and the Member State shall provide to the Commission all necessary additional information. In accordance with the Fund-specific rules, the Commission shall approve requests for amendment of a programme as soon as possible but no later than three months after their submission by the Member State provided that any observations made by the Commission have been adequately taken into account.

Where the amendment of a programme affects the information provided in the Partnership Agreement in accordance with points (a)(iii), (iv) and (vi) of Article 15(1)), the approval of the amendment of the programme by the Commission shall at the same time constitute an approval for the consequential revision of the information in the Partnership Agreement.

3. By way of derogation from paragraph 2, where the request for amendment is submitted to the Commission in order to reallocate the performance reserve following the performance review, the Commission shall make observations only where it considers that the allocation proposed is not in compliance with applicable rules, is not consistent with the development needs of the Member State or the region, or entails a significant risk that the objectives and targets included in the proposal cannot be achieved. The Commission shall approve the request for amendment of a programme as soon as possible and no later than two months after the submission of the request by the Member State provided that any observations made by the Commission have been adequately taken into account. The approval of the amendment of the programme by the Commission shall at the same time constitute an approval for the consequential revision of the information in the Partnership Agreement.

4. By way of derogation from paragraph 2, specific procedures for the amendment of operational programmes may be established in the EMFF Regulation.

#### Article 31

##### Participation of the EIB

1. The EIB may, at the request of Member States, participate in the preparation of the Partnership Agreement, as well as in activities relating to the preparation of operations, in particular major projects, financial instruments and PPPs.

2. The Commission may consult the EIB before the adoption of the Partnership Agreement or the programmes.

3. The Commission may request the EIB to examine the technical quality, economic and financial sustainability, and the viability of major projects and to assist it as regards the financial instruments to be implemented or developed.

4. The Commission, in implementing the provisions of this Regulation, may award grants or service contracts to the EIB covering initiatives implemented on a multi-annual basis. The commitment of the contributions of the budget of the Union in respect of such grants or service contracts shall be effected annually.

#### CHAPTER II

##### Community-led local development

#### Article 32

##### Community-led local development

1. Community-led local development shall be supported by the EAFRD, which shall be designated as LEADER local development and may be supported by the ERDF, ESF or EMFF. For the purposes of this Chapter, those Funds are hereinafter referred to as the "ESI Funds concerned".

2. Community-led local development shall be:

- (a) focused on specific subregional areas;
- (b) led by local action groups composed of representatives of public and private local socio-economic interests, in which, at the decision-making level neither public authorities, as defined in accordance with national rules, nor any single interest group represents more than 49 % of the voting rights;
- (c) carried out through integrated and multi-sectoral area-based local development strategies;
- (d) designed taking into consideration local needs and potential, and shall include innovative features in the local context, networking and, where appropriate, cooperation.

3. Support from the ESI Funds concerned to community-led local development shall be consistent and coordinated between the ESI Funds concerned. This shall be ensured inter alia through coordinated capacity-building, selection, approval and funding of community-led local development strategies and local action groups.

4. Where the selection committee for the community-led local development strategies set up under Article 33(3) determines that the implementation of the community-led local development strategy selected requires support from more than one Fund, it may designate in accordance with national rules and procedures, a lead Fund to support all running and animation costs under points (d) and (e) of Article 35(1) for the community-led local development strategy.

5. Community-led local development supported by the ESI Funds concerned shall be carried out under one or more priorities of the relevant programme or programmes in accordance with Fund-specific rules of the ESI Funds concerned.

#### Article 33

##### Community-led local development strategies

1. A community-led local development strategy shall contain at least the following elements:

- (a) the definition of the area and population covered by the strategy;
- (b) an analysis of the development needs and potential of the area, including an analysis of strengths, weaknesses, opportunities and threats;
- (c) a description of the strategy and its objectives, a description of the integrated and innovative features of the strategy and a hierarchy of objectives, including measurable targets for outputs or results. In relation to results, targets may be expressed in quantitative or qualitative terms. The strategy shall be consistent with the relevant programmes of all the ESI Funds concerned that are involved;
- (d) a description of the community involvement process in the development of the strategy;
- (e) an action plan demonstrating how objectives are translated into actions;
- (f) a description of the management and monitoring arrangements of the strategy, demonstrating the capacity of the local action group to implement the strategy and a description of specific arrangements for evaluation;
- (g) the financial plan for the strategy, including the planned allocation from each of the ESI Funds concerned.

2. Member States shall define criteria for the selection of community-led local development strategies.

3. Community-led local development strategies shall be selected by a committee set up for that purpose by the

managing authority or authorities responsible and approved by the managing authority or authorities responsible.

4. The first round of selection of community-led local development strategies shall be completed within two years of the date of the approval of the Partnership Agreement. Member States may select additional community-led local development strategies after that date but no later than 31 December 2017.

5. The decision approving a community-led local development strategy shall set out the allocations of each of the ESI Funds concerned. The decision shall also set out the responsibilities for the management and control tasks under the programme or programmes in relation to the community-led local development strategy.

6. The population of the area referred to in point (a) of paragraph 1 shall be not less than 10 000 and not more than 150 000 inhabitants. However, in duly justified cases and on the basis of a proposal by a Member State the Commission may adopt or amend those population limits in its decision under Article 15(2) or (3) to approve or amend respectively the Partnership Agreement in the case of that Member State, in order to take account of sparsely or densely populated areas or in order to ensure the territorial coherence of areas covered by the community-led local development strategies.

#### Article 34

##### Local action groups

1. Local action groups shall design and implement the community-led local development strategies.

Member States shall define the respective roles of the local action group and the authorities responsible for the implementation of the relevant programmes, concerning all implementation tasks relating to the community-led local development strategy.

2. The managing authority or authorities responsible shall ensure that the local action groups either select one partner within the group as a lead partner in administrative and financial matters, or come together in a legally constituted common structure.

3. The tasks of local action groups shall include the following:

- (a) building the capacity of local actors to develop and implement operations including fostering their project management capabilities;
- (b) drawing up a non-discriminatory and transparent selection procedure and objective criteria for the selection of operations, which avoid conflicts of interest, ensure that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allow selection by written procedure;

- (c) ensuring coherence with the community-led local development strategy when selecting operations, by prioritising those operations according to their contribution to meeting that strategy's objectives and targets;
- (d) preparing and publishing calls for proposals or an ongoing project submission procedure, including defining selection criteria;
- (e) receiving and assessing applications for support;
- (f) selecting operations and fixing the amount of support and, where relevant, presenting the proposals to the body responsible for final verification of eligibility before approval;
- (g) monitoring the implementation of the community-led local development strategy and the operations supported and carrying out specific evaluation activities linked to that strategy.

4. Without prejudice to point (b) of paragraph 3, the local action group may be a beneficiary and implement operations in accordance with the community-led local development strategy.

5. In the case of cooperation activities of local action groups as referred to in point (c) of Article 35(1), the tasks set out in point (f) of paragraph 3 of this Article may be carried out by the managing authority responsible.

#### Article 35

### Support from the ESI Funds for community-led local development

1. Support from the ESI Funds concerned for community-led local development shall cover:

- (a) the costs of preparatory support consisting of capacity-building, training and networking with a view to preparing and implementing a community-led local development strategy.

Such costs may include one or more of the following elements:

- (i) training actions for local stakeholders;
- (ii) studies of the area concerned;
- (iii) costs related to the design of the community-led local development strategy, including consultancy costs and costs for actions related to consultations of stakeholders for the purposes of preparing the strategy;

- (iv) administrative costs (operating and personnel costs) of an organisation that applies for preparatory support during the preparation phase;

- (v) support for small pilot projects.

Such preparatory support shall be eligible regardless of whether the community-led local development strategy designed by the local action group benefitting from the support is selected for funding by the selection committee set up under Article 33(3).

- (b) implementation of operations under the community-led local development strategy;
- (c) preparation and implementation of the local action group's cooperation activities;
- (d) running costs linked to the management of the implementation of the community-led local development strategy consisting of operating costs, personnel costs, training cost, costs linked to public relations, financial costs as well as the costs linked to monitoring and evaluation of that strategy as referred to in point (g) of Article 34(3);
- (e) animation of the community-led local development strategy in order to facilitate exchange between stakeholders to provide information and to promote the strategy and to support potential beneficiaries with a view to developing operations and preparing applications.

2. Support for running costs and animation as referred to in points (d) and (e) of paragraph 1 shall not exceed 25 % of the total public expenditure incurred within the community-led local development strategy.

#### CHAPTER III

### Territorial development

#### Article 36

### Integrated territorial investment

1. Where an urban development strategy or other territorial strategy, or a territorial pact referred to in Article 12(1) of the ESF Regulation, requires an integrated approach involving investments from the ESF, ERDF or Cohesion Fund under more than one priority axis of one or more operational programmes, actions may be carried out as an integrated territorial investment (an 'ITI').

Actions carried out as an ITI may be complemented with financial support from the EAFRD or the EMFF.

2. Where an ITI is supported by ESF, ERDF or Cohesion Fund, the relevant operational programme or programmes shall describe the approach to the use of the ITI instrument and the indicative financial allocation from each priority axis in accordance with the Fund-specific rules.

Where an ITI is complemented with financial support from the EAFRD or the EMFF, the indicative financial allocation and the measures covered shall be set out in the relevant programme or programmes in accordance with the Fund-specific rules.

3. The Member State or the managing authority may designate one or more intermediate bodies, including local authorities, regional development bodies or non-governmental organisations, to carry out the management and implementation of an ITI in accordance with the Fund-specific rules.

4. The Member State or the relevant managing authorities shall ensure that the monitoring system for the programme or programmes provides for the identification of operations and outputs of a priority contributing to an ITI.

#### TITLE IV

### FINANCIAL INSTRUMENTS

#### Article 37

#### Financial instruments

1. The ESI Funds may be used to support financial instruments under one or more programmes, including when organised through funds of funds, in order to contribute to the achievement of specific objectives set out under a priority.

Financial instruments shall be implemented to support investments which are expected to be financially viable and do not give rise to sufficient funding from market sources. When applying this Title, the managing authorities, the bodies implementing funds of funds, and the bodies implementing financial instruments shall comply with applicable law, in particular on State aid and public procurement.

2. Support of financial instruments shall be based on an ex ante assessment which has established evidence of market failures or suboptimal investment situations, and the estimated level and scope of public investment needs, including types of financial instruments to be supported. Such ex ante assessment shall include:

- (a) an analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology;
- (b) an assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion;

- (c) an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and level of, preferential remuneration to attract counterpart resources from private investors and/or a description of the mechanisms which will be used to establish the need for, and extent of, such preferential remuneration, such as a competitive or appropriately independent assessment process;

- (d) an assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future;

- (e) the proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate;

- (f) a specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;

- (g) provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation.

3. The ex ante assessment referred to in paragraph 2 may be performed in stages. It shall, in any event, be completed before the managing authority decides to make programme contributions to a financial instrument.

The summary findings and conclusions of ex ante assessments in relation to financial instruments shall be published within three months of their date of finalisation.

The ex ante assessment shall be submitted to the monitoring committee for information purposes in accordance with the Fund-specific rules.

4. Where financial instruments support financing to enterprises, including SMEs, such support shall target the establishment of new enterprises, early stage-capital, i.e. seed capital and start-up capital, expansion capital, capital for the strengthening of the general activities of an enterprise, or the

realisation of new projects, penetration of new markets or new developments by existing enterprises, without prejudice to applicable Union State aid rules, and in accordance with the Fund-specific rules. Such support may include investment in both tangible and intangible assets as well as working capital within the limits of applicable Union State aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. It may also include the costs of transfer of proprietary rights in enterprises provided that such transfers take place between independent investors.

5. Investments that are to be supported through financial instruments shall not be physically completed or fully implemented at the date of the investment decision.

6. Where financial instruments provide support to final recipients in respect of infrastructure investments with the objective of supporting urban development or urban regeneration or similar infrastructure investments with the objectives of diversifying non-agricultural activities in rural areas, such support may include the amount necessary for the reorganisation of a debt portfolio regarding infrastructure forming part of the new investment, up to a maximum of 20 % of the total amount of programme support from the financial instrument to the investment.

7. Financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies. Where support from ESI Funds is provided by means of financial instruments and combined in a single operation, with other forms of support directly related to financial instruments targeting the same final recipients, including technical support, interest rate subsidies and guarantee fee subsidies, the provisions applicable to financial instruments shall apply to all forms of support within that operation. In such cases, applicable Union State aid rules shall be respected and separate records shall be maintained for each form of support.

8. Final recipients supported by an ESI Fund financial instrument may also receive assistance from another ESI Funds priority or programme or from another instrument supported by the budget of the Union in accordance with applicable Union State aid rules. In that case, separate records shall be maintained for each source of assistance and the ESI Funds financial instrument support shall be part of an operation with eligible expenditure distinct from the other sources of assistance.

9. The combination of support provided through grants and financial instruments as referred to in paragraphs 7 and 8 may, subject to applicable Union State aid rules, cover the same expenditure item provided that the sum of all forms of support combined does not exceed the total amount of the expenditure item concerned. Grants shall not be used to reimburse support received from financial instruments. Financial instruments shall not be used to pre-finance grants.

10. Contributions in kind shall not constitute eligible expenditure in respect of financial instruments, except for contributions of land or real estate in respect of investments with the objective of supporting rural development, urban development or urban regeneration, where the land or real estate forms part of the investment. Such contributions of land or real estate shall be eligible provided that the conditions laid down in Article 69(1) are met.

11. VAT shall not constitute eligible expenditure of an operation, except in the case of VAT which is non-recoverable under national VAT legislation. The treatment of VAT at the level of investments made by final recipients shall not be taken into account for the purposes of determining the eligibility of expenditure under the financial instrument. However, where financial instruments are combined with grants under paragraphs 7 and 8 of this Article, the provisions of Article 69(3) shall apply to the grant.

12. For the purposes of the application of this Article, the applicable Union State aid rules shall be those in force at the time when the managing authority or the body that implements the fund of funds contractually commits programme contributions to a financial instrument, or when the financial instrument contractually commits programme contributions to final recipients, as applicable.

13. The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional specific rules on the purchase of land and on combining technical support with financial instruments.

#### Article 38

##### Implementation of financial instruments

1. In implementing Article 37, managing authorities may provide a financial contribution to the following financial instruments:

- (a) financial instruments set up at Union level, managed directly or indirectly by the Commission;
- (b) financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority.

2. Contributions from the ESI Funds to financial instruments under point (a) of paragraph 1 shall be placed in separate accounts and used, in accordance with the objectives of the respective ESI Funds, to support actions and final recipients consistent with the programme or programmes from which such contributions are made.



Contributions to the financial instruments referred to in the first subparagraph shall be subject to this Regulation unless exceptions are expressly provided for.

The second subparagraph is without prejudice to the rules governing the set up and functioning of the financial instruments under the Financial Regulation, unless those rules conflict with the rules of this Regulation, in which case this Regulation prevails.

3. For financial instruments under point (b) of paragraph 1, the managing authority may provide a financial contribution to the following financial instruments:

- (a) financial instruments complying with the standard terms and conditions laid down by the Commission, in accordance with the second subparagraph of this paragraph;
- (b) already existing or newly created financial instruments which are specifically designed to achieve the specific objectives set out under the relevant priority.

The Commission shall adopt implementing acts concerning the standard terms and conditions with which the financial instruments under point (a) of the first subparagraph shall comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4. When supporting financial instruments referred to in point (b) of paragraph 1 the managing authority may:

- (a) invest in the capital of existing or newly created legal entities, including those financed from other ESI Funds, dedicated to implementing financial instruments consistent with the objectives of the respective ESI Funds, which will undertake implementation tasks; the support to such entities shall be limited to the amounts necessary to implement new investments in accordance with Article 37 and in a manner that is consistent with the objectives of this Regulation;
- (b) entrust implementation tasks to:
  - (i) the EIB;
  - (ii) international financial institutions in which a Member State is a shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority;
  - (iii) a body governed by public or private law; or
- (c) undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or

guarantees. In that case the managing authority shall be considered to be the beneficiary as defined in point (10) of Article 2.

When implementing the financial instrument, the bodies referred to in points (a),(b) and (c) of the first subparagraph shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud. Those bodies shall not be established and shall not maintain business relations with entities incorporated in territories, whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standards and shall transpose such requirements in their contracts with the selected financial intermediaries.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that may be delivered through financial instruments in accordance with Article 37. The Commission shall notify those delegated acts simultaneously to the European Parliament and the Council by 22 april 2014.

5. The bodies referred to in points (a) and (b) of the first subparagraph of paragraph 4, when implementing funds of funds may further entrust part of the implementation to financial intermediaries provided that such entities ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Article 140(1),(2) and (4) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest.

6. The bodies referred to in point (b) of the first subparagraph of paragraph 4 to which implementation tasks have been entrusted shall open fiduciary accounts in their name and on behalf of the managing authority, or set up the financial instrument as a separate block of finance within the financial institution. In the case of a separate block of finance, an accounting distinction shall be made between programme resources invested in the financial instrument and the other resources available in the financial institution. The assets held on fiduciary accounts and such separate blocks of finance shall be managed in accordance with the principle of sound financial management following appropriate prudential rules and shall have appropriate liquidity.

7. Where a financial instrument is implemented under points (a) and (b) of the first subparagraph of paragraph 4, subject to the implementation structure of the financial instrument, the terms and conditions for contributions from programmes to financial instruments shall be set out in funding agreements in accordance with Annex III at the following levels:

- (a) where applicable, between the duly mandated representatives of the managing authority and the body that implements the fund of funds; and

(b) between the duly mandated representatives of the managing authority, or where applicable, the body that implements the fund of funds, and the body that implements the financial instrument.

8. For financial instruments implemented under point (c) of the first subparagraph of paragraph 4, the terms and conditions for contributions from programmes to financial instruments shall be set out in a strategy document in accordance with Annex IV to be examined by the monitoring committee.

9. National public and private contributions, including where relevant contributions in kind as referred to in Article 37(10), may be provided at the level of the fund of funds, at the level of the financial instrument or at the level of final recipients, in accordance with the Fund-specific rules.

10. The Commission shall adopt implementing acts laying down uniform conditions regarding the detailed arrangements for the transfer and management of programme contributions managed by the bodies referred to in the first subparagraph of paragraph 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 39

#### **Contribution of ERDF and EAFRD to joint uncapped guarantee and securitisation financial instruments in favour of SMEs, implemented by the EIB**

1. For the purposes of this Article, 'debt finance' means loans, leasing or guarantees.

2. Member States may use the ERDF and EAFRD to provide a financial contribution to financial instruments referred to in point (a) of Article 38(1) of this Regulation, managed indirectly by the Commission with implementation tasks entrusted to the EIB pursuant to point (c)(iii) of Article 58(1) and Article 139(4) of the Financial Regulation, in respect of the following activities:

- (a) uncapped guarantees providing capital relief to financial intermediaries for new portfolios of debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation;
- (b) securitisation, as defined in point (61) of Article 4 (1) of Regulation (EU) 575/2013 of the European Parliament and of the Council<sup>(1)</sup>, of any of the following:
  - (i) existing portfolios of debt finance to SMEs and other enterprises with less than 500 employees;

<sup>(1)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (ii) new portfolios of debt finance to SMEs.

The financial contribution referred to in points (a) and (b) of the first subparagraph of this paragraph shall contribute to junior and/or mezzanine tranches of portfolios mentioned therein provided that the relevant financial intermediary retains a sufficient part of the risk of the portfolios at least equal to the risk retention requirement set out in Directive 2013/36/EU of the European Parliament and of the Council<sup>(2)</sup> and in Regulation (EU) No 575/2013 to ensure adequate alignment of interest. In the case of securitisation under point (b) of the first subparagraph of this paragraph, the financial intermediary is obliged to originate new debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation.

Each Member State intending to participate in such financial instruments shall contribute an amount which is in line with SMEs' debt financing needs in that Member State and the estimated demand for such SME debt finance, taking into account the ex ante assessment referred to in point (a) of the first subparagraph of paragraph 4 and in any case which is not higher than 7 % of the allocation from the ERDF and EAFRD to the Member State. The aggregate ERDF and EAFRD contribution by all participating Member States shall be subject to a global ceiling of EUR 8 500 000 000 (in 2011 prices).

Where it is considered by the Commission in consultation with the EIB that the aggregate minimum contribution to the instrument representing the sum of the contributions of all participating Member States is insufficient taking due account of the minimum critical mass defined in the ex ante assessment referred to in point (a) of the first subparagraph of paragraph 4, implementation of the financial instrument shall be discontinued and the contributions returned to the Member States.

Where the Member State and the EIB are not able to agree the conditions of the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 the Member State shall submit a request for amendment of the programme referred to in point (b) of the first subparagraph of paragraph 4 and reallocate the contribution to other programmes and priorities in accordance with requirements for thematic concentration.

Where the conditions for the termination of the Member State's contribution to the instrument established in the funding agreement between the Member State concerned and the EIB referred to in point (c) of the first subparagraph of paragraph 4 have been satisfied, the Member State shall submit a request for amendment of the programme referred to in point (b) of the

<sup>(2)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

first subparagraph of paragraph 4 and reallocate the remaining contribution to other programmes and priorities in accordance with requirements for thematic concentration.

Where the participation of a Member State is discontinued, that Member State shall submit a request for amendment of the programme. Where unused appropriations are decommitted, the decommitted appropriations shall be made available again to the Member State concerned, in order to be re-programmed for other programmes and priorities in accordance with the requirements for thematic concentration.

3. The SMEs which receive new debt finance, as a result of the new portfolio built up by the financial intermediary in the context of the financial instrument referred to in paragraph 2 shall be considered the final recipients of the contribution of the ERDF and EAFRD to the financial instrument concerned.

4. The financial contribution referred to in paragraph 2 shall comply with the following conditions:

(a) by way of derogation from Article 37(2), it shall be based on one ex ante assessment at Union level carried out by the EIB and the Commission.

On the basis of available data sources on bank debt finance and SMEs, the ex ante assessment shall cover, inter alia, an analysis of the SME financing needs at Union level, SME financing conditions and needs as well as an indication of the SME financing gap in each Member State, a profile of the economic and financial situation of the SME sector at Member State level, minimum critical mass of aggregate contributions, a range of estimated total loan volume generated by such contributions, and the added value;

(b) it shall be provided by each participating Member State as part of a single dedicated national programme per financial contribution by ERDF and EAFRD supporting the thematic objective set out in point (3) of the first paragraph of Article 9;

(c) it shall be subject to the conditions set out in a funding agreement concluded between each participating Member State and the EIB including, inter alia:

(i) tasks and obligations of the EIB including remuneration;

(ii) minimum leverage to be achieved at clearly defined milestones within the eligibility period indicated in Article 65(2);

(iii) conditions for the new debt finance;

(iv) provisions relating to non-eligible activities and exclusion criteria;

(v) schedule of payments;

(vi) penalties in the event of non-performance by financial intermediaries;

(vii) selection of financial intermediaries;

(viii) monitoring, reporting and auditing;

(ix) visibility;

(x) the conditions for termination of the agreement.

For the purposes of implementation of the instrument, the EIB will enter into contractual arrangements with selected financial intermediaries;

(d) in the event that the funding agreement referred to in point (c) is not concluded within six months of the adoption of the programme referred to in point (b), the Member State shall have the right to reallocate such contribution to other programmes and priorities in accordance with requirements for thematic concentration.

The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt an implementing act laying down the model of the funding agreement referred to in point (c) of the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 150(3).

5. A minimum leverage shall be achieved in each participating Member State at the milestones set out in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4, calculated as the ratio between the new debt finance to eligible SMEs to be originated by the financial intermediaries and the corresponding contribution of the ERDF and EAFRD from the relevant Member State to the financial instruments. Such minimum leverage may vary between participating Member States.

In the event that the financial intermediary does not achieve the minimum leverage set out in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 it shall be contractually bound to pay penalties for the benefit of the participating Member State, in accordance with the terms and conditions set out in the funding agreement.

Neither the guarantees issued nor the relevant securitisation transactions shall be affected by a failure by the financial intermediary to reach the minimum leverage set out in the funding agreement.

6. By way of derogation from the first subparagraph of Article 38(2), financial contributions referred to in paragraph 2 of this Article may be placed in separate accounts per Member State or, if two or more participating Member States give their consent, in a single account covering all such Member States and used in accordance with the specific objectives of the programmes from which the contributions are made.

7. By way of derogation from Article 41(1) and (2) as regards the financial contributions referred to in paragraph 2 of this Article, the Member State's request for payment to the Commission shall be made on the basis of 100 % of the amounts to be paid by the Member State to the EIB in accordance with the schedule defined in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 of this Article. Such requests for payment shall be based on the amounts requested by the EIB deemed necessary to cover commitments for guarantee contracts or securitisation transactions to be finalised within the three following months. Payments from Member States to the EIB shall be made without delay and in any case before commitments are entered into by the EIB.

8. At closure of the programme, the eligible expenditure shall be the total amount of programme contributions paid to the financial instrument, corresponding:

(a) for the activities referred to in point (a) of the first subparagraph of paragraph 2 of this Article, to the resources referred to in point (b) of the first subparagraph of Article 42(3);

(b) for the activities referred to in point (b) of the first subparagraph of paragraph 2 of this Article, to the aggregate amount of new debt finance resulting from the securitisation transactions, paid to or to the benefit of eligible SMEs within the eligibility period indicated in Article 65(2).

9. For the purpose of Articles 44 and 45, the uncalled guarantees and the amounts recovered in relation to, respectively, the uncapped guarantees and the securitisation transactions, shall be deemed to be resources paid back to the financial instruments. At the winding up of the financial instruments, the net liquidation proceeds, after deduction of costs, fees and payment of amounts due to creditors ranking senior to those contributed by the ERDF and EAFRD, shall be returned to the relevant Member States pro rata to their contributions to the financial instrument.

10. The report referred to in Article 46(1) shall include the following additional elements:

(a) the total amount of ERDF and EAFRD support paid to the financial instrument in relation to uncapped guarantees or securitisation transactions, by programme and priority or measure;

(b) progress in creating the new debt finance in accordance with Article 37(4), for eligible SMEs.

11. Notwithstanding Article 93(1), the resources allocated to instruments under paragraph 2 of this Article may be used for the purpose of giving rise to new SME debt finance in the entire territory of the Member State without regard to the categories

of region, unless otherwise provided for in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4.

12. Article 70 shall not apply to programmes set up to implement financial instruments under this Article.

#### Article 40

##### Management and control of financial instruments

1. Bodies designated in accordance with Article 124 of this Regulation for ERDF, Cohesion Fund, ESF, EMFF and with Article 65 of the EAFRD Regulation for the EAFRD shall not carry out on-the spot verifications of operations comprising financial instruments implemented under point (a) of Article 38(1). Those designated bodies shall receive regular control reports from the bodies entrusted with the implementation of those financial instruments.

2. The bodies responsible for the audit of programmes shall not carry out audits of operations comprising financial instruments implemented under point (a) of Article 38(1) and of management and control systems relating to those financial instruments. They shall receive regular control reports from the auditors designated in the agreements setting up those financial instruments.

3. The bodies responsible for the audit of programmes may conduct audits at the level of final recipients only when one or more of the following situations occur:

(a) supporting documents, providing evidence of the support from the financial instrument to final recipients and of its use for the intended purposes in line with applicable law, are not available at the level of the managing authority or at the level of the bodies that implement financial instruments;

(b) there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided.

4. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, concerning the management and control of financial instruments referred to in point (b) of Article 38(1), including controls to be performed by managing and audit authorities, arrangements for keeping supporting documents, elements to be evidenced by supporting documents, and management and control and audit arrangements. The Commission shall notify those delegated acts simultaneously to the European Parliament and the Council by 22 April 2014.

5. The bodies implementing financial instruments shall be responsible for ensuring that supporting documents are available and shall not impose on final recipients record-keeping requirements that go beyond what is necessary to enable them to fulfil that responsibility.

#### Article 41

#### Requests for payment including expenditure for financial instruments

1. As regards financial instruments referred to in point (a) of Article 38(1) and financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a) and (b) of Article 38(4), phased applications for interim payments shall be made for programme contributions paid to the financial instrument during the eligibility period laid down in Article 65(2) (the 'eligibility period') in accordance with the following conditions:

- (a) the amount of the programme contribution paid to the financial instrument included in each application for interim payment submitted during the eligibility period shall not exceed 25 % of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement, corresponding to expenditure within the meaning of points (a), (b) and (d) of Article 42(1) expected to be paid during the eligibility period. Applications for interim payment submitted after the eligibility period shall include the total amount of eligible expenditure within the meaning of Article 42;
- (b) each application for interim payment referred to in point (a) of this paragraph may include up to 25 % of the total amount of the national co-financing as referred to in Article 38(9) expected to be paid to the financial instrument, or at the level of final recipients for expenditure in the meaning of points (a), (b) and (d) of Article 42(1), within the eligibility period;
- (c) subsequent applications for interim payment submitted during the eligibility period shall only be made:
  - (i) for the second application for interim payment, when at least 60 % of the amount included in the first application for interim payments has been spent as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1);
  - (ii) for the third and subsequent applications for interim payment, when at least 85 % of the amounts included in the previous applications for interim payments have been spent as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1);
- (d) each application for interim payment, which includes expenditure related to financial instruments, shall separately disclose the total amount of programme contributions paid to the financial instrument and the amounts paid as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1).

At closure of a programme, the application for payment of the final balance shall include the total amount of eligible expenditure as referred to in Article 42.

2. As regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with point (c) of Article 38(4), the applications for interim payments and for payment of the final balance shall include the total amount of the payments effected by the managing authority for investments in final recipients as referred to in points (a) and (b) of Article 42(1).

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 149, laying down the rules for withdrawal of payments to financial instruments and consequent adjustments in respect of applications for payments.

4. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the models to be used when submitting additional information concerning financial instruments with the applications for payments to the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 42

#### Eligible expenditure at closure

1. At closure of a programme, the eligible expenditure of the financial instrument shall be the total amount of programme contributions effectively paid or, in the case of guarantees, committed by the financial instrument within the eligibility period, corresponding to:

- (a) payments to final recipients, and in the cases referred to in Article 37(7) payments to the benefit of final recipients;
- (b) resources committed for guarantee contracts, whether outstanding or already come to maturity, in order to honour possible guarantee calls for losses, calculated on the basis of a prudent ex ante risk assessment, covering a multiple amount of underlying new loans or other risk-bearing instruments for new investments in final recipients;
- (c) capitalised interest rate subsidies or guarantee fee subsidies, due to be paid for a period not exceeding 10 years after the eligibility period, used in combination with financial instruments, paid into an escrow account specifically set up for that purpose, for effective disbursement after the eligibility period, but in respect of loans or other risk-bearing instruments disbursed for investments in final recipients within the eligibility period;
- (d) reimbursement of management costs incurred or payment of management fees of the financial instrument.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down the specific rules concerning the establishment of a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies referred to in point (c) of the first subparagraph.

2. In the case of equity-based instruments and micro-credit, capitalised management costs or fees due to be paid for a period not exceeding six years after the eligibility period, in respect of investments in final recipients which occurred within the eligibility period, which cannot be covered by Articles 44 or 45, may be considered as eligible expenditure when paid into an escrow account specifically set up for that purpose.

3. In the case of equity-based instruments targeting enterprises referred to in Article 37(4) for which the funding agreement referred to in point (b) of Article 38(7) was signed before 31 December 2017, which by the end of the eligibility period invested at least 55 % of the programme resources committed in the relevant funding agreement, a limited amount of payments for investments in final recipients to be made for a period not exceeding four years after the end of eligibility period may be considered as eligible expenditure, when paid into an escrow account specifically set up for that purpose, provided that State aid rules are complied with and that all of the conditions set out below are fulfilled.

The amount paid into the escrow account:

- (a) shall be used solely for follow-on investments in final recipients having received initial equity investments from the financial instrument within the eligibility period, which are still wholly or partially outstanding;
- (b) shall be used solely for follow-on investments to be made in accordance with market standards and market standard contractual arrangements and limited to the minimum necessary to stimulate private sector co-investment, while ensuring continuity of financing for the target enterprises so that both public and private investors can benefit from investments;
- (c) shall not exceed 20 % of the eligible expenditure of the equity-based instrument referred to in point (a) of the first subparagraph of paragraph 1 from which ceiling capital resources and gains returned to that equity-based instrument during the eligibility period shall be deducted.

Any amounts paid into the escrow account which are not used for investments in final recipients paid in the period referred to in the first subparagraph shall be used in accordance with Article 45.

4. The eligible expenditure disclosed in accordance with paragraphs 1 and 2 shall not exceed the sum of the:

- (a) total amount of the support from the ESI Funds paid for the purposes of paragraphs 1 and 2; and
- (b) corresponding national co-financing.

5. Management cost and fees as referred to in point (d) of the first subparagraph of paragraph 1 and in paragraph 2 of this Article may be charged by the body implementing the fund of funds or bodies implementing financial instruments pursuant to points (a) and (b) of Article 38(4) and shall not exceed the thresholds defined in the delegated act referred to in paragraph 6 of this Article. Whereas management costs shall comprise direct or indirect cost items reimbursed against evidence of expenditure, management fees shall refer to an agreed price for services rendered established via a competitive market process, where applicable. Management costs and fees shall be based on a performance based calculation methodology.

Management costs and fees may comprise arrangement fees. Where arrangement fees, or any part thereof, are charged to final recipients, they shall not be declared as eligible expenditure.

Management costs and fees, including those incurred for preparatory work in relation to the financial instrument before the signature of the relevant funding agreement, shall be eligible as from the date of signature of the relevant funding agreement.

6. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the specific rules setting out the criteria for determining management costs and fees on the basis of performance and the applicable thresholds as well as rules for the reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit.

#### Article 43

#### **Interest and other gains generated by support from the ESI Funds to financial instruments**

1. Support from the ESI Funds paid to financial instruments shall be placed in accounts domiciled within financial institutions in Member States and shall be invested on a temporary basis in accordance with the principles of sound financial management.

2. Interest and other gains attributable to support from the ESI Funds paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument in accordance with point (d) of the first subparagraph of Article 42(1), and expenditure paid in accordance with Article 42(2), as the initial support from the ESI Funds either within the same financial instrument, or following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period.

3. The managing authority shall ensure that adequate records of the use of interest and other gains are maintained.

#### Article 44

##### **Re-use of resources attributable to the support from the ESI Funds until the end of the eligibility period**

1. Resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, including capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by investments, which are attributable to the support from the ESI Funds, shall be re-used for the following purposes, up to the amounts necessary and in the order agreed in the relevant funding agreements:

- (a) further investments through the same or other financial instruments, in accordance with the specific objectives set out under a priority;
- (b) where applicable, preferential remuneration of private investors, or public investors operating under the market economy principle, who provide counterpart resources to the support from the ESI Funds to the financial instrument or who co-invest at the level of final recipients;
- (c) where applicable, reimbursement of management costs incurred and payment of management fees of the financial instrument.

The need and the level for preferential remuneration pursuant to point (b) of the first subparagraph shall be established in the ex-ante assessment. The preferential remuneration shall not exceed what is necessary to create the incentives for attracting private counterpart resources and shall not over-compensate private investors, or public investors operating under the market economy principle. The alignment of interest shall be ensured through an appropriate sharing of risk and profit and shall be carried out on a normal commercial basis and be compatible with Union State aid rules.

2. The managing authority shall ensure that adequate records of the use of the resources referred to in paragraph 1 are maintained.

#### Article 45

##### **Use of resources after the end of the eligibility period**

Member States shall adopt the necessary measures to ensure that resources paid back to financial instruments, including capital repayments and gains and other earnings or yields generated during a period of at least eight years after the end of the eligibility period, which are attributable to the support from the ESI Funds to financial instruments pursuant to

Article 37, are used in accordance with the aims of the programme or programmes, either within the same financial instrument or, following the exit of those resources from the financial instrument, in other financial instruments provided that, in both cases, an assessment of market conditions demonstrates a continuing need for such investment, or in other forms of support.

#### Article 46

##### **Report on implementation of financial instruments**

1. The managing authority shall send to the Commission a specific report covering the operations comprising financial instruments as an annex to the annual implementation report.

2. The specific report referred to in paragraph 1 shall include, for each financial instrument, the following information:

- (a) identification of the programme and of the priority or measure from which support from the ESI Funds is provided;
- (b) description of the financial instrument and implementation arrangements;
- (c) identification of the bodies implementing financial instruments, and the bodies implementing funds of funds where applicable, as referred to under point (a) of Article 38(1), points (a), (b) and (c) of Article 38(4), and the financial intermediaries referred to under Article 38(6);
- (d) total amount of programme contributions by priority or measure paid to the financial instrument;
- (e) total amount of support paid to the final recipients or to the benefit of final recipients, or committed in guarantee contracts by the financial instrument for investments in final recipients, as well as management costs incurred or management fees paid, by programme and priority or measure;
- (f) the performance of the financial instrument including progress in its set-up and in selection of bodies implementing the financial instrument, including the body implementing a fund of funds;
- (g) interest and other gains generated by support from the ESI Funds to the financial instrument and programme resources paid back to financial instruments from investments as referred to in Articles 43 and 44;
- (h) progress in achieving the expected leverage effect of investments made by the financial instrument and value of investments and participations;

- (i) the value of equity investments, with respect to previous years;
- (j) contribution of the financial instrument to the achievement of the indicators of the priority or measure concerned.

The information in points (h) and (j) of the first subparagraph may be included only in the annex to the annual implementation reports submitted in 2017 and 2019 as well as in the final implementation report. The reporting obligations set out in points (a) to (j) of the first subparagraph shall not be applied at the level of final recipients.

3. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the models to be used when reporting on financial instruments to the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4. Each year, starting in 2016, the Commission shall, within six months of the deadline for the submission of the annual implementation reports referred to in Article 111(1) for the ERDF, ESF and the Cohesion Fund, Article 75 of the EAFRD Regulation for the EAFRD, and the relevant provisions of Funds-specific rules for the EMFF, provide summaries of the data on the progress made in financing and implementing the financial instruments, sent by the managing authorities in accordance with this Article. Those summaries shall be transmitted to the European Parliament and the Council and shall be made public.

## TITLE V

### MONITORING AND EVALUATION

#### CHAPTER I

#### **Monitoring**

##### Section I

#### **Monitoring of programmes**

##### *Article 47*

#### **Monitoring committee**

1. Within three months of the date of notification to the Member State of the Commission decision adopting a programme, the Member State shall set up a committee, in accordance with its institutional, legal and financial framework, to monitor implementation of the programme, in agreement with the managing authority (the "monitoring committee").

A Member State may set up a single monitoring committee to cover more than one programme co-financed by the ESI Funds.

2. Each monitoring committee shall draw up and adopt its rules of procedure in accordance with the institutional, legal and financial framework of the Member State concerned.

3. The monitoring committee of a programme under the European territorial cooperation goal shall be set up by the

Member States participating in the cooperation programme and by third countries, in the event that they have accepted the invitation to participate in the cooperation programme, in agreement with the managing authority within three months of the date of notification of the decision adopting the cooperation programme to the Member States. That monitoring committee shall draw up and adopt its rules of procedure.

#### *Article 48*

#### **Composition of the monitoring committee**

1. The composition of the monitoring committee shall be decided by the Member State, provided that the monitoring committee is composed of representatives of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 5. Representatives of the partners shall be delegated to be part of the monitoring committee by the respective partners through transparent processes. Each member of the monitoring committee may have a voting right.

The composition of the monitoring committee of a programme under the European territorial goal shall be agreed by the Member States participating in the programme and by third countries in the event that they have accepted the invitation to participate in the cooperation programme. The monitoring committee shall include relevant representatives of those Member States and third countries. The monitoring committee may include representatives of the EGTC carrying out activities related to the programme within the programme area.

2. The list of the members of the monitoring committee shall be published.

3. The Commission shall participate in the work of the monitoring committee in an advisory capacity.

4. If the EIB contributes to a programme, it may participate in the work of the monitoring committee in an advisory capacity.

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

#### *Article 49*

#### **Functions of the monitoring committee**

1. The monitoring committee shall meet at least once a year and shall review implementation of the programme and progress made towards achieving its objectives. In doing so, it shall have regard to the financial data, common and programme-specific indicators, including changes in the value of result indicators and progress towards quantified target values, and the milestones defined in the performance framework referred to in Article 21(1), and, where relevant, the results of qualitative analyses.

2. The monitoring committee shall examine all issues that affect the performance of the programme, including the conclusions of the performance reviews.



3. The monitoring committee shall be consulted and shall, if it considers it to be appropriate, give an opinion on any amendment of the programme proposed by the managing authority.

4. The monitoring committee may make observations to the managing authority regarding implementation and evaluation of the programme including actions related to the reduction of the administrative burden on beneficiaries. The monitoring committee shall monitor actions taken as a result of its observations.

#### Article 50

##### Implementation reports

1. From 2016 until and including 2023, each Member State shall submit to the Commission an annual report on implementation of the programme in the previous financial year. Each Member State shall submit to the Commission a final report on implementation of the programme for the ERDF, the ESF and the Cohesion Fund and an annual implementation report for the EAFRD and the EMFF by the deadline established in the Fund-specific rules.

2. Annual implementation reports shall set out key information on implementation of the programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, including changes in the value of result indicators where appropriate, and, beginning from the annual implementation report to be submitted in 2017, the milestones defined in the performance framework. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, having regard to the stage of implementation, for selected operations. They shall also set out a synthesis of the findings of all evaluations of the programme that have become available during the previous financial year, any issues which affect the performance of the programme, and the measures taken. The annual implementation report to be submitted in 2016 may also set out, where relevant, actions taken to fulfil ex ante conditionalities.

3. By way of derogation from paragraph 2, specific rules on the data to be transmitted for the ESF may be established in the ESF Regulation.

4. The annual implementation report to be submitted in 2017 shall set out and assess the information referred to in paragraph 2 and progress made towards achieving the objectives of the programme, including the contribution of the ESI Funds to changes in the value of result indicators, when evidence is available from relevant evaluations. That annual implementation report shall set out the actions taken to fulfil the ex-ante conditionalities not fulfilled at the time of adoption of the programmes. It shall also assess the implementation of actions to take into account the principles set out in Articles 7 and 8, the role of the partners referred to in Article 5 in the implementation of the programme and report on support used for climate change objectives.

5. The annual implementation report to be submitted in 2019 and the final implementation report for the ESI Funds shall, in addition to the information and assessment referred to

in paragraphs 2 and 3, include information on, and assess progress towards, achieving the objectives of the programme and its contribution to achieving the Union strategy for smart, sustainable and inclusive growth.

6. In order to be deemed admissible, the annual implementation reports referred to in paragraphs 1 to 5 shall contain all the information required in those paragraphs and in the Fund-specific rules.

The Commission shall inform the Member State within 15 working days of the date of receipt of the annual implementation report if it is not admissible, failing which it shall be deemed admissible.

7. The Commission shall examine the annual and final implementation report and inform the Member State of its observations within two months of the date of receipt of the annual implementation report and within five months of the date of receipt of the final implementation report. Where the Commission does not provide observations within those deadlines, the reports shall be deemed to be accepted.

8. The Commission may make observations to the managing authority concerning issues which significantly affect the implementation of the programme. Where such observations are made, the managing authority shall provide all necessary information with regard to those observations and, where appropriate, inform the Commission, within three months, of measures taken.

9. The annual and final implementation reports, as well as a summary for citizens of their content, shall be made available to the public.

#### Article 51

##### Annual review meeting

1. An annual review meeting shall be organised every year from 2016 until and including 2023 between the Commission and each Member State to examine the performance of each programme, taking account of the annual implementation report and the Commission's observations where applicable.

2. The annual review meeting may cover more than one programme. In 2017 and 2019, the annual review meeting shall cover all programmes in the Member State and shall also take account of the progress reports submitted by the Member State, in accordance with Article 52, in those years.

3. By way of derogation from paragraph 1, the Member State and the Commission may agree not to organise an annual review meeting for a programme in years other than 2017 and 2019.

4. The annual review meeting shall be chaired by the Commission or, if the Member State so requests, co-chaired by the Member State and the Commission.

5. The Member State shall ensure that appropriate follow-up is given to comments of the Commission following the annual review meeting concerning issues which significantly affect the implementation of the programme and, where appropriate, inform the Commission, within three months, of the measures taken.

## Section II

### Strategic progress

#### Article 52

##### Progress report

1. By 31 August 2017 and by 31 August 2019, the Member State shall submit to the Commission a progress report on implementation of the Partnership Agreement as at 31 December 2016 and 31 December 2018 respectively.

2. The progress report shall set out information on and assess:

- (a) changes in the development needs in the Member State since the adoption of the Partnership Agreement;
- (b) progress made towards achievement of the Union strategy for smart, sustainable and inclusive growth, as well as of the Fund-specific missions referred to in Article 4(1), through the contribution of the ESI Funds to the thematic objectives selected, and in particular with regard to the milestones set out in the performance framework for each programme, and to the support used for climate change objectives;
- (c) whether the actions taken to fulfil the applicable ex ante conditionalities set out in the Partnership Agreement not fulfilled at the date of adoption of the Partnership Agreement have been implemented in accordance with the timetable established. This point shall only apply to the progress report to be submitted in 2017;
- (d) implementation of mechanisms to ensure coordination between the ESI Funds and other Union and national funding instruments and with the EIB;
- (e) implementation of the integrated approach to territorial development, or a summary of the implementation of the integrated approaches that are based on the programmes, including progress towards achievement of priority areas established for cooperation;
- (f) where appropriate, actions taken to reinforce the capacity of the Member State authorities and beneficiaries to administer and use the ESI Funds;
- (g) actions taken, and progress made, with regard to reducing the administrative burden on beneficiaries;

(h) the role of the partners referred to in Article 5 in the implementation of the Partnership Agreement;

(i) a summary of the actions taken in relation to the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds.

3. Where the Commission determines, within two months of the date of submission of the progress report, that the information submitted is incomplete or unclear in a manner which significantly affects the quality and reliability of the assessment concerned, it may request additional information from the Member State, on condition that that request does not cause unjustified delays and that the Commission provides reasons to substantiate the alleged lack of quality and reliability. The Member State shall provide to the Commission the information requested within three months and, where appropriate, shall revise the progress report accordingly.

4. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the model to be used when submitting the progress report. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

#### Article 53

##### Reporting by the Commission and debate on the ESI Funds

1. The Commission shall transmit each year from 2016 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a summary report in relation to ESI Fund programmes based on the annual implementation reports of the Member States submitted under Article 50 as well as a synthesis of the findings of the available evaluations of programmes. In 2017 and 2019 the summary report shall form a part of the strategic report referred to in paragraph 2.

2. In 2017 and 2019, the Commission shall prepare a strategic report summarising the progress reports of the Member States, which by 31 December 2017 and 31 December 2019, respectively, it shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and those institutions shall be invited to hold a debate on it.

3. The Council shall debate the strategic report in particular with regard to the contribution of the ESI Funds to the achievement of the Union strategy for smart, sustainable and inclusive growth and shall be invited to provide input to the spring meeting of the European Council.

4. Every two years from 2018, the Commission shall include in its Annual Progress Report to the spring meeting of the European Council a section summarising the most recent of the reports referred to in paragraphs 1 and 2, in particular with regard to the contribution of the ESI Funds to progress made towards the Union strategy for smart, sustainable and inclusive growth.

## CHAPTER II

**Evaluation**

## Article 54

**General Provisions**

1. Evaluations shall be carried out to improve the quality of the design and implementation of programmes, as well as to assess their effectiveness, efficiency and impact. The impact of programmes shall be evaluated, in the light of the mission of each ESI Fund, in relation to the targets under the Union strategy for smart, sustainable and inclusive growth and, having regard to the size of the programme, in relation to GDP and unemployment in the programme area concerned, where appropriate.

2. Member States shall provide the resources necessary for carrying out evaluations, and shall ensure that procedures are in place to produce and collect the data necessary for evaluations, including data related to common and where appropriate programme-specific indicators.

3. Evaluations shall be carried out by internal or external experts that are functionally independent of the authorities responsible for programme implementation. The Commission shall provide guidance on how to carry out evaluations, immediately following the entry into force of this Regulation.

4. All evaluations shall be made available to the public.

## Article 55

**Ex ante evaluation**

1. Member States shall carry out ex ante evaluations to improve the quality of the design of each programme.

2. Ex ante evaluations shall be carried out under the responsibility of the authority responsible for the preparation of the programmes. They shall be submitted to the Commission at the same time as the programme, together with an executive summary. The Fund-specific rules may establish thresholds below which the ex ante evaluation may be combined with the evaluation for another programme.

3. Ex ante evaluations shall appraise:

- (a) the contribution to the Union strategy for smart, sustainable and inclusive growth, having regard to the selected thematic objectives and priorities, taking into account national and regional needs and potential for development as well as lessons drawn from previous programming periods;
- (b) the internal coherence of the proposed programme or activity and its relationship with other relevant instruments;
- (c) the consistency of the allocation of budgetary resources with the objectives of the programme;
- (d) the consistency of the selected thematic objectives, the priorities and corresponding objectives of the programmes

with the CSF, the Partnership Agreement and the relevant country specific recommendations adopted in accordance with Article 121(2) TFEU and where appropriate at national level, the National Reform Programme;

- (e) the relevance and clarity of the proposed programme indicators;
- (f) how the expected outputs will contribute to results;
- (g) whether the quantified target values for indicators are realistic, having regard to the support envisaged from the ESI Funds;
- (h) the rationale for the form of support proposed;
- (i) the adequacy of human resources and administrative capacity for management of the programme;
- (j) the suitability of the procedures for monitoring the programme and for collecting the data necessary to carry out evaluations;
- (k) the suitability of the milestones selected for the performance framework;
- (l) the adequacy of planned measures to promote equal opportunities between men and women and to prevent any discrimination, in particular as regards accessibility for persons with disabilities;
- (m) the adequacy of planned measures to promote sustainable development;
- (n) measures planned to reduce the administrative burden on beneficiaries.

4. Ex ante evaluations shall incorporate, where appropriate, the requirements for strategic environmental assessment set out in Directive 2001/42/EC of the European Parliament and of the Council <sup>(1)</sup> taking into account climate change mitigation needs.

## Article 56

**Evaluation during the programming period**

1. An evaluation plan shall be drawn up by the managing authority or Member State and may cover more than one programme. It shall be submitted in accordance with the Fund-specific rules.

2. Member States shall ensure that appropriate evaluation capacity is available.

<sup>(1)</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

3. During the programming period, the managing authority shall ensure that evaluations, including evaluations to assess effectiveness, efficiency and impact, are carried out for each programme on the basis of the evaluation plan and that each evaluation is subject to appropriate follow-up in accordance with the Fund-specific rules. At least once during the programming period, an evaluation shall assess how support from the ESI Funds has contributed to the objectives for each priority. All evaluations shall be examined by the monitoring committee and sent to the Commission.

4. The Commission may carry out, at its own initiative, evaluations of programmes. It shall inform the managing authority and the results shall be sent to the managing authority and provided to the monitoring committee concerned.

5. Paragraphs 1, 2 and 3 of this Article shall not apply to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).

#### Article 57

##### Ex post evaluation

1. The ex post evaluations shall be carried out by the Commission, or by the Member States in close cooperation with the Commission. Ex post evaluations shall examine the effectiveness and efficiency of the ESI Funds and their contribution to the Union strategy for smart, sustainable and inclusive growth taking account of the targets established in that Union strategy and in accordance with specific requirements established in the Fund-specific rules.

2. Ex post evaluations shall be completed by 31 December 2024.

3. The ex-post evaluation of the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) shall be carried out by the Commission and completed by 31 December 2019.

4. For each of the ESI Funds, the Commission shall prepare, by 31 December 2025, a synthesis report outlining the main conclusions of ex-post evaluations.

#### TITLE VI

##### TECHNICAL ASSISTANCE

#### Article 58

##### Technical assistance at the initiative of the Commission

1. At the initiative of the Commission, the ESI Funds may support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures necessary for implementing this Regulation.

The measures referred to in the first subparagraph may be implemented either directly by the Commission or indirectly, by entities and persons other than Member States in accordance with Article 60 of the Financial Regulation.

The measures referred to in the first subparagraph may include in particular:

- (a) assistance for project preparation and appraisal, including with the EIB;
- (b) support for institutional strengthening and administrative capacity-building for the effective management of the ESI Funds;
- (c) studies linked to the Commission's reporting on the ESI Funds and the cohesion report;
- (d) measures related to the analysis, management, monitoring, information exchange and implementation of the ESI Funds, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (e) evaluations, expert reports, statistics and studies, including those of a general nature, concerning the current and future operation of the ESI Funds, which may be carried out where appropriate by the EIB;
- (f) actions to disseminate information, support networking, carry out communication activities, raise awareness and promote cooperation and exchange of experience, including with third countries;
- (g) the installation, operation and interconnection of computerised systems for management, monitoring, audit, control and evaluation;
- (h) actions to improve evaluation methods and the exchange of information on evaluation practices;
- (i) actions related to auditing;
- (j) the strengthening of national and regional capacity regarding investment planning, needs assessment, preparation, design and implementation of financial instruments, joint action plans and major projects, including joint initiatives with the EIB;
- (k) the dissemination of good practices in order to assist Member States to strengthen the capacity of the relevant partners referred to in Article 5 and their umbrella organisations;
- (l) measures to identify, prioritize and implement structural and administrative reforms in response to economic and social challenges in Member States which meet the conditions set out in Article 24(1).

To bring about greater efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation shall also contribute to the corporate communication of the political priorities of the Union as far as they are related to the general objectives of this Regulation.

2. The Commission shall set out each year its plans on the type of actions related to the measures listed in paragraph 1, when a contribution from the ESI Funds is envisaged, by means of implementing acts.

#### Article 59

### Technical assistance at the initiative of the Member States

1. At the initiative of a Member State, the ESI Funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ESI Funds may be used by the Member State to support actions for the reduction of the administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds. The ESI Funds may also be used to support actions to reinforce the capacity of relevant partners in line with point (e) of Article 5(3) and to support exchange of good practices between such partners. The actions referred to in this paragraph may concern previous and subsequent programming periods.

2. The Fund-specific rules may add or exclude actions which may be financed by the technical assistance of each ESI Fund.

#### TITLE VII

### FINANCIAL SUPPORT FROM THE ESI FUNDS

#### CHAPTER I

### Support from the ESI Funds

#### Article 60

### Determination of co-financing rates

1. The Commission decision adopting a programme shall fix the co-financing rate or rates and the maximum amount of support from the ESI Funds in accordance with the Fund-specific rules.

2. Technical assistance measures implemented at the initiative of, or on behalf of, the Commission may be financed at the rate of 100 %.

#### Article 61

### Operations generating net revenue after completion

1. This Article shall apply to operations which generate net revenue after their completion. For the purposes of this Article 'net revenue' means cash in-flows directly paid by users for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Operating cost-savings generated by the operation shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies.

Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.

2. The eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both implementation of the operation and the period after its completion.

3. The potential net revenue of the operation shall be determined in advance by one of the following methods chosen by the managing authority for a sector, subsector or type of operation:

- (a) application of a flat rate net revenue percentage for the sector or subsector applicable to the operation as defined in Annex V or in any of the delegated acts referred to in the second, third and fourth subparagraphs;
- (b) calculation of the discounted net revenue of the operation, taking into account the reference period appropriate to the sector or subsector applicable to the operation, the profitability normally expected of the category of investment concerned, the application of the polluter-pays principle and, if appropriate, considerations of equity linked to the relative prosperity of the Member State or region concerned.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 in duly justified cases to amend Annex V by adjusting the flat rates established therein taking into account historical data, the potential for cost recovery and the polluter-pays principle where applicable.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 establishing flat rates for sectors or subsectors within the fields of ICT, RDI and energy efficiency. The Commission shall notify the delegated acts to the European Parliament and the Council not later than 30 June 2015.

In addition, the Commission shall be empowered to adopt delegated acts in accordance with Article 149 in duly justified cases with regard to adding sectors or subsectors, including subsectors for sectors in Annex V, falling under the thematic objectives defined in the first paragraph of Article 9 and supported by the ESI Funds.

Where the method referred to in point (a) of the first subparagraph is applied, all the net revenue generated during implementation and after completion of the operation shall be considered to be taken into account by the application of the flat rate and shall therefore not be deducted subsequently from the eligible expenditure of the operation.

When a flat rate for a new sector or subsector has been established by the adoption of a delegated act in accordance with the third and fourth subparagraphs, a managing authority may choose to apply the method set out in point (a) of the first subparagraph for new operations in relation to the sector or subsector concerned.

The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the method referred to in point (b) of the first subparagraph. Where that method is applied, the net revenue generated during implementation of the operation, resulting from sources of revenue not taken into account in determining the potential net revenue of the operation, shall be deducted from the eligible expenditure of the operation, no later than in the final payment claim submitted by the beneficiary.

4. The method by which the net revenue is deducted from the expenditure of the operation included in the request for payment submitted to the Commission shall be determined in accordance with national rules.

5. As an alternative to the application of the methods laid down in paragraph 3, the maximum co-financing rate referred to in Article 60(1) may, at the request of a Member State, be decreased at the moment of adoption of a programme for a priority or measure under which all operations supported under that priority or measure could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3. The decrease shall be not less than the amount calculated by multiplying the maximum Union co-financing rate applicable under the Fund-specific rules by the relevant flat rate referred to in point (a) of the first subparagraph of paragraph 3.

Where the method referred to in the first subparagraph is applied, all net revenue generated during implementation, and after completion, of the operation shall be considered to be taken into account by application of the decreased co-financing rate and shall therefore not be deducted subsequently from the eligible expenditure of the operations.

6. Where it is objectively not possible to determine the revenue in advance based on any of the methods set out in paragraphs 3 or 5, the net revenue generated within three years of the completion of an operation, or by the deadline for the submission of documents for programme closure fixed in the Fund-specific rules, whichever is the earlier, shall be deducted from the expenditure declared to the Commission.

7. Paragraphs 1 to 6 shall not apply to:

- (a) operations or parts of operations supported solely by the ESF;
- (b) operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000;

- (c) repayable assistance subject to an obligation for full repayment and prizes;
- (d) technical assistance;
- (e) support to or from financial instruments;
- (f) operations for which public support takes the form of lump sums or standard scale unit costs;
- (g) operations implemented under a joint action plan;
- (h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation.

Notwithstanding point (b) of the first subparagraph of this paragraph, where a Member State applies paragraph 5, it may include in the relevant priority or measure operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000.

8. In addition, paragraphs 1 to 6 shall not apply to operations for which support under the programme constitutes:

- (a) de minimis aid;
- (b) compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to State aid;
- (c) compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out.

Notwithstanding the first subparagraph, a managing authority may apply the paragraphs 1 to 6 to operations which fall under points (a) to (c) of the first subparagraph of this paragraph where this is provided for in national rules.

## CHAPTER II

### **Special rules on support from the ESI Funds to PPPs**

#### Article 62

#### **PPPs**

The ESI Funds may be used to support PPP operations. Such PPP operations shall comply with applicable law, in particular concerning State aid and public procurement.

#### Article 63

#### **Beneficiary under PPP operations**

1. In relation to a PPP operation, and by way of derogation from point (10) of Article 2, a beneficiary may be either:

- (a) the public law body initiating the operation; or

(b) a body governed by private law of a Member State (the "private partner") selected or to be selected for the implementation of the operation.

2. The public law body initiating the PPP operation may propose that the private partner, to be selected after approval of the operation, be the beneficiary for the purposes of support from the ESI Funds. In that event, the approval decision shall be conditional on the managing authority satisfying itself that the selected private partner fulfils and assumes all the corresponding obligations of a beneficiary under this Regulation.

3. The private partner selected to implement the operation may be replaced as beneficiary during implementation where this is required under the terms and conditions of the PPP or the financing agreement between the private partner and the financial institution co-financing the operation. In that event the replacement private partner or public law body shall become the beneficiary provided that the managing authority satisfies itself that the replacement partner fulfils and assumes all the corresponding obligations of a beneficiary under this Regulation.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional rules on the replacement of a beneficiary and on the related responsibilities.

5. The replacement of a beneficiary shall not be considered a change in ownership within the meaning of point (b) of Article 71(1) if that replacement satisfies the applicable conditions set out in paragraph 3 of this Article and in a delegated act adopted pursuant to paragraph 4 of this Article.

#### Article 64

##### Support for PPP operations

1. In the case of a PPP operation where the beneficiary is a public law body, expenditure under a PPP operation which has been incurred and paid by the private partner may, by way of derogation from Article 65(2), be considered as incurred and paid by a beneficiary and included in a request for payment to the Commission provided that the following conditions are met:

- (a) the beneficiary has entered into a PPP agreement with a private partner;
- (b) the managing authority has verified that the expenditure declared by the beneficiary has been paid by the private partner and that the operation complies with applicable Union and national law, the programme and the conditions for support of the operation.

2. Payments to beneficiaries made in respect of expenditure included in a request for payment in accordance with paragraph 1 shall be paid into an escrow account set up for that purpose in the name of the beneficiary.

3. The funds paid into the escrow account referred to in paragraph 2 shall be used for payments in accordance with

the PPP agreement, including any payments to be made in the event of termination of the PPP agreement.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down the minimum requirements to be included in PPP agreements which are necessary for the application of the derogation laid down in paragraph 1 of this Article, including provisions related to termination of the PPP agreement and for the purpose of ensuring an adequate audit trail.

#### CHAPTER III

##### Eligibility of expenditure and durability

#### Article 65

##### Eligibility

1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules.

2. Expenditure shall be eligible for a contribution from the ESI Funds if it has been incurred by a beneficiary and paid between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2023. In addition, expenditure shall only be eligible for a contribution from the EAFRD if the relevant aid is actually paid by the paying agency between 1 January 2014 and 31 December 2023.

3. By way of derogation from paragraph 2, expenditure under the YEI shall be eligible as of 1 September 2013.

4. In the case of costs reimbursed pursuant to points (b) and (c) of the first subparagraph of Article 67(1), the actions constituting the basis for reimbursement shall be carried out between 1 January 2014 and 31 December 2023.

5. By way of derogation from paragraph 4, the starting date in relation to costs reimbursed on the basis of (b) and (c) of the first subparagraph of Article 67(1) for actions under the YEI shall be 1 September 2013.

6. Operations shall not be selected for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.

7. This Article shall be without prejudice to the rules on eligibility of technical assistance at the initiative of the Commission set out in Article 58.

8. This paragraph shall apply to operations which generate net revenue during their implementation and to which paragraphs 1 to 6 of Article 61 do not apply.

The eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced by the net revenue not taken into account at the time of approval of the operation directly generated only during its implementation, not later than at the final payment claim submitted by the beneficiary. Where not all the costs are eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the cost.

This paragraph shall not apply to:

- (a) technical assistance;
- (b) financial instruments;
- (c) repayable assistance subject to an obligation for full repayment;
- (d) prizes;
- (e) operations subject to the State aid rules;
- (f) operations for which public support takes the form of lump sums or standard scale unit costs provided that the net revenue has been taken into account ex ante;
- (g) operations implemented under a joint action plan provided that the net revenue has been taken into account ex ante;
- (h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation; or
- (i) operations for which the total eligible cost does not exceed EUR 50 000.

For the purposes of this Article and Article 61, any payment received by the beneficiary arising from contractual penalties as a result of a breach of contract between the beneficiary and a third party or third parties or that has occurred as a result of the withdrawal of an offer by a third party chosen under public procurement rules (the 'deposit') shall not be considered as revenue and shall not be deducted from the eligible expenditure of the operation.

9. Expenditure that becomes eligible as a result of an amendment to a programme shall only be eligible from the date of submission to the Commission of the request for amendment or, in the event of application of Article 96(11), from the date of entry into force of the decision amending the programme.

The Fund-specific rules for the EMFF may derogate from the first subparagraph.

10. By way of derogation from paragraph 9, specific provisions on the starting date of eligibility may be established in the EAFRD Regulation.

11. An operation may receive support from one or more ESI Funds or from one or more programmes and from other Union instruments, provided that the expenditure item included in a request for payment for reimbursement by one of the ESI Funds does not receive support from another Fund or Union instrument, or support from the same Fund under another programme.

#### Article 66

##### Forms of support

The ESI Funds shall be used to provide support in the form of grants, prizes, repayable assistance and financial instruments, or a combination thereof.

In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State, shall be kept in a separate account or separated with accounting codes and reused for the same purpose or in accordance with the objectives of the programme.

#### Article 67

##### Forms of grants and repayable assistance

1. Grants and repayable assistance may take any of the following forms:

- (a) reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;
- (b) standard scales of unit costs;
- (c) lump sums not exceeding EUR 100 000 of public contribution;
- (d) flat-rate financing, determined by the application of a percentage to one or more defined categories of costs.

Fund-specific rules may limit the forms of grants or repayable assistance applicable to certain operations.

2. By way of derogation from paragraph 1, additional forms of grants and methods of calculation may be established in the EMFF Regulation.

3. The options referred to in paragraph 1 may be combined only where each option covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.



4. Where an operation or a project forming a part of an operation is implemented exclusively through the public procurement of works, goods or services, only point (a) of the first subparagraph of paragraph 1 shall apply. Where the public procurement within an operation or project forming part of an operation is limited to certain categories of costs, all the options referred to in paragraph 1 may be applied.

5. The amounts referred to in points (b), (c) and (d) of the first subparagraph of paragraph 1 shall be established in one of the following ways:

- (a) a fair, equitable and verifiable calculation method based on:
  - (i) statistical data or other objective information;
  - (ii) the verified historical data of individual beneficiaries; or
  - (iii) the application of the usual cost accounting practices of individual beneficiaries;
- (b) in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary;
- (c) in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
- (d) rates established by this Regulation or the Fund-specific rules;
- (e) specific methods for determining amounts established in accordance with the Fund-specific rules.

6. The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

#### Article 68

##### **Flat rate financing for indirect costs and staff costs concerning grants and repayable assistance**

1. Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:

- (a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;

- (b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;

- (c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 concerning the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.

2. For the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours.

#### Article 69

##### **Specific eligibility rules for grants and repayable assistance**

1. Contributions in kind in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices, or documents of equivalent probative value, has been made, may be eligible on condition that the eligibility rules of the ESI Funds and the programme so provide and that all the following criteria are fulfilled:

- (a) the public support paid to the operation which includes contributions in kind does not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;
- (b) the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;
- (c) the value and the delivery of the contribution can be independently assessed and verified;
- (d) in the case of provision of land or real estate, a cash payment, for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State, may be made;
- (e) in the case of contributions in kind in the form of unpaid work, the value of that work is determined by taking into account the verified time spent and the rate of remuneration for equivalent work.

The value of the land or real estate referred to in point (d) of the first subparagraph of this paragraph shall be certified by an independent qualified expert or duly authorised official body and shall not exceed the limit laid down in point (b) of paragraph 3.

2. Depreciation costs may be considered as eligible where the following conditions are fulfilled:

- (a) the eligibility rules of the programme allow for it;
- (b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs where reimbursed in the form referred to in point (a) of the first subparagraph of Article 67(1);
- (c) the costs relate exclusively to the period of support for the operation;
- (d) public grants have not contributed towards the acquisition of the depreciated assets.

3. The following costs shall not be eligible for a contribution from the ESI Funds and from the amount of support transferred from the Cohesion Fund to the CEF as referred to in Article 92(6):

- (a) interest on debt, except in relation to grants given in the form of an interest rate subsidy or guarantee fee subsidy;
- (b) the purchase of land not built on and land built on in the amount exceeding 10 % of the total eligible expenditure for the operation concerned. For derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %. In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation;
- (c) value added tax except where it is non-recoverable under national VAT legislation.

#### Article 70

##### Eligibility of operations depending on location

1. Operations supported by the ESI Funds, subject to the derogations referred to in paragraphs 2 and 3, and the Fund-specific rules, shall be located in the programme area.

2. The managing authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:

- (a) the operation is for the benefit of the programme area;
- (b) the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority, or 5 % of the support from the EAFRD at the level of the programme;

(c) the monitoring committee has given its agreement to the operation or types of operations concerned;

(d) the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

3. For operations concerning technical assistance or promotional activities, expenditure may be incurred outside the Union provided that the conditions set out in point (a) of paragraph 2 and the obligations in relation to management, control and audit concerning the operation are fulfilled.

4. Paragraphs 1 to 3 shall not apply to programmes under the European territorial cooperation goal and paragraphs 2 and 3 shall not apply to operations supported by the ESF.

#### Article 71

##### Durability of operations

1. An operation comprising investment in infrastructure or productive investment shall repay the contribution from the ESI Funds if within five years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, it is subject to any of the following:

- (a) a cessation or relocation of a productive activity outside the programme area;
- (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Sums unduly paid in respect of the operation shall be recovered by the Member State in proportion to the period for which the requirements have not been fulfilled.

Member States may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.

2. An operation comprising investment in infrastructure or productive investment shall repay the contribution from the ESI Funds if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the Union, except where the beneficiary is an SME. Where the contribution from the ESI Funds takes the form of State aid, the period of 10 years shall be replaced by the deadline applicable under State aid rules.

3. Operations supported by the ESF and operations supported by the other ESI Funds that are not investments in infrastructure or productive investments shall repay the contribution from the Fund only where they are subject to an obligation for maintenance of investment under the applicable State aid rules and where they undergo a cessation or relocation of a productive activity within the period laid down in those rules.

4. Paragraphs 1, 2 and 3 shall not apply to contributions to or by financial instruments or to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.

5. Paragraphs 1, 2 and 3 shall not apply to natural persons who are beneficiaries of investment support and, after the completion of the investment operation, become eligible for and receive support under Regulation (EU) No 1309/2013 of the European Parliament and of the Council where the investment concerned is directly linked to the type of activity identified as eligible for support from the European Globalisation Adjustment Fund.

## TITLE VIII

### MANAGEMENT AND CONTROL

#### CHAPTER I

#### *Management and control systems*

##### Article 72

#### **General principles of management and control systems**

Management and control systems shall, in accordance with Article 4(8), provide for:

- (a) a description of the functions of each body involved in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) systems for reporting and monitoring where the body responsible entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;

- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

##### Article 73

#### **Responsibilities under shared management**

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in this Regulation and in the Fund-specific rules.

##### Article 74

#### **Responsibilities of Member States**

1. Member States shall fulfil the management, control and audit obligations, and assume the resulting responsibilities, which are laid down in the rules on shared management set out in the Financial Regulation and the Fund-specific rules.

2. Member States shall ensure that their management and control systems for programmes are set up in accordance with the Fund-specific rules and that those systems function effectively.

3. Member States shall ensure that effective arrangements for the examination of complaints concerning the ESI Funds are in place. The scope, rules and procedures concerning such arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements. Member States shall inform the Commission, upon request, of the results of those examinations.

4. All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system. The Commission shall adopt implementing acts establishing the terms and conditions with which that electronic data exchange system is to comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### CHAPTER II

#### **Commission powers and responsibilities**

##### Article 75

#### **Commission powers and responsibilities**

1. The Commission shall satisfy itself, on the basis of available information, including information on the designation of bodies responsible for the management and control, the documents provided each year, in accordance with Article 59(5) of the Financial Regulation, by those designated bodies, control reports, annual implementation reports and audits carried out by national and Union bodies, that the Member States have set up management and control systems that comply with this Regulation and the Fund-specific rules and that those systems function effectively during the implementation of programmes.

2. Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks subject to giving at least 12 working days notice to the competent national authority, except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or checks carried out by Member States, the level of risk to the budget of the Union and the need to minimise the administrative burden on beneficiaries in accordance with the Fund-specific rules. The scope of such audits or checks may include, in particular, verification of the effective functioning of management and control systems in a programme or a part thereof, in operations and assessment of the sound financial management of operations or programmes. Officials or authorised representatives of the Member State may take part in such audits or checks.

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits or checks, shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the ESI Funds or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request.

The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Commission officials and authorised representatives shall not take part, inter alia, in home visits or the formal questioning of persons within the framework of national legislation. However, such officials and representatives shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect of the fundamental rights of the legal subjects concerned.

3. The Commission may require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or the correctness of expenditure in accordance with the Fund-specific rules.

#### TITLE IX

### FINANCIAL MANAGEMENT, EXAMINATION AND ACCEPTANCE OF ACCOUNTS AND FINANCIAL CORRECTIONS, DECOMMITMENT

#### CHAPTER I

#### *Financial management*

#### *Article 76*

#### **Budget commitments**

The budget commitments of the Union in respect of each programme shall be made in annual instalments for each Fund during the period between 1 January 2014 and 31 December 2020. The budget commitments relating to the performance reserve in each programme shall be made separately from the remaining allocation to the programme.

The decision of the Commission adopting a programme shall constitute a financing decision within the meaning of Article 84 of the Financial Regulation and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each programme, the budget commitments for the first instalment shall follow the adoption of the programme by the Commission.

The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the second paragraph of this Article, except where Article 16 of the Financial Regulation applies.

Following application of the performance framework in accordance with Article 22, where priorities have not achieved their milestones, the Commission shall where necessary decommit the corresponding appropriations committed to the programmes concerned as part of the performance reserve and shall make them available again for the programmes for which the allocation is increased as a result of an amendment approved by the Commission in accordance with Article 22(5).

#### *Article 77*

#### **Common rules for payments**

1. Payments by the Commission of the contribution from the ESI Funds to each programme shall be made in accordance with budget appropriations and subject to available funding. Each payment shall be posted to the earliest open budget commitment of the Fund concerned.

2. Payments related to the commitments of the performance reserve shall not be made prior to the definitive allocation of the performance reserve, in accordance with Article 22(3) and (4).

3. Payments shall take the form of pre-financing, interim payments and payment of the final balance.

4. For forms of support under points (b), (c) and (d) of the first subparagraph of Article 67(1) and under Articles 68 and 69, costs calculated on the applicable basis shall be regarded as eligible expenditure.

#### *Article 78*

#### **Common rules for calculating interim payments, and payment of the final balance**

The Fund-specific rules shall lay down rules for the calculation of the amount reimbursed as interim payments, and of the final balance. That amount shall be a function of the specific co-financing rate applicable to the eligible expenditure.

#### *Article 79*

#### **Requests for payment**

1. The specific procedure and information to be submitted for requests for payment in relation to each ESI Fund shall be laid down in the Fund-specific rules.

2. The request for payment to be submitted to the Commission shall provide all the information necessary for the Commission to produce accounts in accordance with Article 68(3) of the Financial Regulation.

#### Article 80

##### Use of the euro

Amounts set out in programmes submitted by Member States, forecasts of expenditure, statements of expenditure, requests for payment, accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.

#### Article 81

##### Payment of initial pre-financing

1. Following the Commission decision adopting the programme, an initial pre-financing amount for the whole programming period shall be paid by the Commission. The initial pre-financing amount shall be paid in instalments according to budgetary needs. The level of the instalments shall be defined in the Fund-specific rules.

2. Initial pre-financing shall be used only for payments to beneficiaries in the implementation of the programme. It shall be made available without delay to the body responsible for that purpose.

#### Article 82

##### Clearance of initial pre-financing

The amount paid as initial pre-financing shall be totally cleared from the Commission accounts not later than when the programme is closed.

#### Article 83

##### Interruption of the payment deadline

1. The payment deadline for an interim payment claim may be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months if:

- (a) following information provided by a national or Union audit body, there is clear evidence to suggest a significant deficiency in the functioning of the management and control system;
- (b) the authorising officer by delegation has to carry out additional verifications following information that has come to that officer's attention alerting him or her that expenditure in a request for payment is linked to an irregularity having serious financial consequences;
- (c) there is a failure to submit one of the documents required under Article 59(5) of the Financial Regulation.

The Member State may agree to an extension of the interruption period for another three months.

The Fund-specific rules for the EMFF may lay down specific bases for interruption of payments linked to non-compliance with rules applicable under the Common Fisheries Policy, which shall be proportionate, having regard to the nature, gravity, duration and recurrence of the non-compliance.

2. The authorising officer by delegation shall limit the interruption to the part of the expenditure covered by the payment claim affected by the elements referred to in the first subparagraph of paragraph 1, unless it is not possible to identify the part of the expenditure affected. The authorising officer by delegation shall inform the Member State and the managing authority in writing immediately of the reason for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

#### CHAPTER II

##### Examination and acceptance of accounts

#### Article 84

##### Deadline for the examination and acceptance of accounts by the Commission

By 31 May of the year following the end of the accounting period, the Commission shall, in accordance with Article 59(6) of the Financial Regulation, apply procedures for the examination and acceptance of the accounts and inform the Member State as to whether it accepts that the accounts are complete, accurate and true in accordance with Fund-specific rules.

#### CHAPTER III

##### Financial corrections

#### Article 85

##### Financial corrections by the Commission

1. The Commission shall make financial corrections by cancelling all or part of the Union contribution to a programme and effecting recovery from the Member State, in order to exclude from Union financing expenditure which is in breach of applicable law.

2. A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:

- (a) the breach has affected the selection of an operation by the body responsible for support from the ESI Funds or in cases where, due to the nature of the breach, it is not possible to establish that impact but there is a substantiated risk that the breach has had such an effect;
- (b) the breach has affected the amount of expenditure declared for reimbursement by the budget of the Union or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact but there is a substantiated risk that the breach has had such an effect.

3. When deciding on a financial correction under paragraph 1, the Commission shall respect the principle of proportionality by taking account of the nature and gravity of the breach of applicable law and its financial implications for the budget of the Union. The Commission shall keep the European Parliament informed of decisions taken to apply financial corrections.

4. The criteria and the procedures for applying financial corrections shall be laid down in the Fund-specific rules.

#### CHAPTER IV

### Decommitment

#### Article 86

#### Principles

1. All programmes shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by pre-financing or by a request for payment within a defined period, including any request for payment for which all or part is subject to an interruption of the payment deadline or a suspension of payments, shall be decommitted.

2. The commitment related to the last year of the period shall be decommitted in accordance with the rules to be followed for the closure of the programmes.

3. The Fund-specific rules shall specify the precise application of the decommitment rule for each ESI Fund.

4. The part of commitments still open shall be decommitted if any of the documents required for the closure have not been submitted to the Commission by the deadlines established in the Fund-specific rules.

5. The budgetary commitments in respect of the performance reserve shall be subject only to the decommitment procedure set out in paragraph 4.

#### Article 87

### Exception to the decommitment

1. The amount concerned by decommitment shall be reduced by the amounts equivalent to that part of the budget commitment for which:

- (a) the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
- (b) it has not been possible to make a request for payment for reasons of force majeure seriously affecting implementation of all or part of the programme.

The national authorities claiming force majeure under point (b) of the first subparagraph shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the programme.

For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force

majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

2. By 31 January, the Member State shall send to the Commission information on the exceptions referred to in points (a) and (b) of the first subparagraph of paragraph 1 for the amount to be declared by the end of the preceding year.

#### Article 88

### Procedure

1. The Commission shall inform the Member State and the managing authority in good time whenever there is a risk of application of the decommitment rule under Article 86.

2. On the basis of the information it has received as of 31 January, the Commission shall inform the Member State and the managing authority of the amount of the decommitment resulting from that information.

3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.

4. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the financial year concerned, the reduced amount of support over one or more priorities of the programme taking into account the allocation by Fund and by category of region, where appropriate. Failing such submission, the Commission shall revise the financing plan by reducing the contribution from the ESI Funds for the financial year concerned. That reduction shall be allocated to each priority proportionately.

5. The Commission shall amend the decision adopting the programme, by means of implementing acts, not later than 30 September.

## PART THREE

### GENERAL PROVISIONS APPLICABLE TO THE ERDF, THE ESF AND THE COHESION FUND

#### TITLE I

### OBJECTIVES AND FINANCIAL FRAMEWORK

#### CHAPTER I

### Mission, goals and geographical coverage of support

#### Article 89

### Mission and goals

1. The Funds shall contribute to developing and pursuing the actions of the Union leading to strengthening of its economic, social and territorial cohesion in accordance with Article 174 TFEU.

The actions supported by the Funds shall also contribute to the delivery of the Union strategy for smart, sustainable and inclusive growth.

2. For the purpose of the mission referred to in paragraph 1, the following goals shall be pursued:

- (a) Investment for growth and jobs in Member States and regions, to be supported by the Funds; and
- (b) European territorial cooperation, to be supported by the ERDF.

#### Article 90

##### Investment for growth and jobs goal

1. The Structural Funds shall support the Investment for growth and jobs goal in all regions corresponding to level 2 of the common classification of territorial units for statistics ('NUTS level 2 regions') established by Regulation (EC) No 1059/2003 amended by Regulation (EC) No 105/2007.

2. Resources for the Investment for growth and jobs goal shall be allocated among the following three categories of NUTS level 2 regions:

- (a) less developed regions, whose GDP per capita is less than 75 % of the average GDP of the EU-27;
- (b) transition regions, whose GDP per capita is between 75 % and 90 % of the average GDP of the EU-27;
- (c) more developed regions, whose GDP per capita is above 90 % of the average GDP of the EU-27.

The classification of regions under one of the three categories of regions shall be determined on the basis of how the GDP per capita of each region, measured in purchasing power parities (PPS) and calculated on the basis of Union figures for the period 2007 - 2009, relates to the average GDP of the EU-27 for the same reference period.

3. The Cohesion Fund shall support those Member States whose GNI per capita, measured in PPS and calculated on the basis of Union figures for the period 2008 - 2010, is less than 90 % of the average GNI per capita of the EU-27 for the same reference period.

The Member States eligible for funding from the Cohesion Fund in 2013, but whose nominal GNI per capita exceeds 90 % of the average GNI per capita of the EU-27 as calculated under the first subparagraph shall receive support from the Cohesion Fund on a transitional and specific basis.

4. Immediately following the entry into force of this Regulation, the Commission shall adopt a decision, by means of an implementing act, setting out the list of regions fulfilling the criteria of the three categories of regions referred to in

paragraph 2 and of Member States fulfilling the criteria of paragraph 3. That list shall be valid from 1 January 2014 to 31 December 2020.

5. In 2016, the Commission shall review the eligibility of Member States for support from the Cohesion Fund on the basis of Union GNI figures for the period 2012 - 2014 for the EU-27. Those Member States whose nominal GNI per capita falls below 90 % of the average GNI per capita of the EU-27 shall become newly eligible for support from the Cohesion Fund and those Member States which were eligible for the Cohesion Fund and whose nominal GNI per capita exceeds 90 %, shall lose their eligibility and shall receive support from the Cohesion Fund on a transitional and specific basis.

#### CHAPTER II

##### Financial framework

#### Article 91

##### Resources for economic, social and territorial cohesion

1. The resources for economic, social and territorial cohesion available for budgetary commitment for the period 2014 - 2020 shall be EUR 325 145 694 739 in 2011 prices, in accordance with the annual breakdown set out in Annex VI, of which EUR 322 145 694 739 represents the global resources allocated to the ERDF, the ESF and the Cohesion Fund and EUR 3 000 000 000 represents a specific allocation for the YEI. For the purposes of programming and subsequent inclusion in the budget of the Union, the amount of resources for economic, social and territorial cohesion shall be indexed at 2 % per year.

2. The Commission shall adopt a decision, by means of implementing acts, setting out the annual breakdown of the global resources per Member State under the Investment for growth and jobs goal and the European territorial cooperation goal, and the annual breakdown of the resources from the specific allocation for the YEI per Member State together with the list of eligible regions in accordance with the criteria and methodology set out in Annexes VII and VIII respectively, without prejudice to paragraph 3 of this Article or to Article 92(8).

3. 0,35 % of the global resources after the deduction of the support to the CEF referred to in Article 92(6), and to the aid for the most deprived referred to in Article 92(7) shall be allocated to technical assistance at the initiative of the Commission.

#### Article 92

##### Resources for the Investment for growth and jobs goal and for the European territorial cooperation goal

1. Resources for the Investment for growth and jobs goal shall amount to 96,33 % of the global resources (i.e., a total of EUR 313 197 435 409) and shall be allocated as follows:

- (a) 52,45 % (i.e., a total of EUR 164 279 015 916) for less developed regions;

- (b) 10,24 % (i.e., a total of EUR 32 084 931 311) for transition regions;
- (c) 15,67 % (i.e., a total of EUR 49 084 308 755) for more developed regions;
- (d) 21,19 % (i.e., a total of EUR 66 362 384 703) for Member States supported by the Cohesion Fund;
- (e) 0,44 % (i.e., a total of EUR 1 386 794 724) as additional funding for the outermost regions identified in Article 349 TFEU and the NUTS level 2 regions fulfilling the criteria laid down in Article 2 of Protocol No 6 to the 1994 Act of Accession.

2. In addition to the amounts set out in Article 91 and paragraph 1 of this Article, for the years 2014 and 2015, a further amount of EUR 94 200 000 and of EUR 92 400 000 respectively shall be made available as set out in the "Additional adjustments" under Annex VII. Those amounts shall be identified in the decision of the Commission referred to in Article 91(2).

3. In 2016, the Commission shall, in its technical adjustment for the year 2017 in accordance with Articles 4 and 5 of Regulation (EU, Euratom) No 1311/2013, review the total allocations under the Investment for growth and jobs goal of each Member State for 2017-2020, applying the allocation method set out in paragraphs 1 to 16 of Annex VII on the basis of the most recent statistics available and of the comparison, for the capped Member States, between the cumulated national GDP observed for the years 2014-2015 and the cumulated national GDP for the same period estimated in 2012 in accordance with paragraph 10 of Annex VII. Where there is a cumulative divergence of more than +/-5 % between the revised allocations and the total allocations, the total allocations shall be adjusted correspondingly. In accordance with Article 5 of Regulation (EU, Euratom) No 1311/2013, adjustments shall be spread in equal proportions over the years 2017-2020 and the corresponding ceilings of the financial framework shall be modified accordingly. The total net effect of the adjustments, whether positive or negative, shall not exceed EUR 4 000 000 000. Following the technical adjustment, the Commission shall adopt a decision, by means of implementing acts, setting out a revised annual breakdown of the global resources for each Member State.

4. In order to ensure that sufficient investment is targeted at youth employment, labour mobility, knowledge, social inclusion and combating poverty, the share of Structural Funds resources available for programming for operational programmes, under the Investment for growth and jobs goal allocated to the ESF in each Member State, shall not be lower than the corresponding ESF share for that Member State laid down in the operational programmes for the Convergence and Regional competitiveness and employment objectives for the 2007-2013 programming period. To that share shall be added an additional amount for each Member State determined in accordance with the method set out in Annex IX in order to ensure that the share of the ESF as a percentage of total combined resources for the Funds at

Union level, excluding the support from the Cohesion Fund for transport infrastructure under the CEF referred to in paragraph 6 and support from the Structural Funds for aid for the most deprived referred to in paragraph 7, in Member States is not less than 23,1 %. For the purposes of this paragraph, investment provided from the ESF to the YEI shall be considered to be part of the share of Structural Funds allocated to the ESF.

5. Resources for the YEI shall amount to EUR 3 000 000 000 from the specific allocation for the YEI and at least EUR 3 000 000 000 from ESF targeted investment.

6. The amount of support from the Cohesion Fund to be transferred to the CEF shall be EUR 10 000 000 000. It shall be spent for transport infrastructure projects in line with Regulation (EU) No 1316/2013 exclusively in Member States eligible for funding from the Cohesion Fund.

The Commission shall adopt a decision, by means of an implementing act, setting out the amount to be transferred from each Member State's Cohesion Fund allocation to the CEF, which amount shall be determined on a pro rata basis for the whole period. The Cohesion Fund allocation of each Member State shall be reduced accordingly.

The annual appropriations corresponding to the support from the Cohesion Fund referred to in the first subparagraph shall be entered in the relevant budget lines of the CEF as of the 2014 budgetary exercise.

The amount transferred from the Cohesion Fund to the CEF, referred to in the first subparagraph, shall be implemented by launching specific calls for projects implementing the core networks or for projects and horizontal activities identified in Part I of Annex I to Regulation (EU) No 1316/2013.

Rules applicable for the transport sector under Regulation (EU) No 1316/2013 shall apply to the specific calls referred to in the fourth subparagraph. Until 31 December 2016, the selection of projects eligible for financing shall respect the national allocations under the Cohesion Fund. As of 1 January 2017, resources transferred to the CEF which have not been committed to a transport infrastructure project shall be made available to all Member States eligible for funding from the Cohesion Fund to finance transport infrastructure projects in accordance with Regulation (EU) No 1316/2013.

In order to support Member States eligible for funding from the Cohesion Fund, which may experience difficulties in designing projects that are of a sufficient maturity, quality, or both, and which have sufficient added value for the Union, particular attention shall be given to programme support actions aimed at strengthening institutional capacity and the efficiency of public administrations and public services in relation to the development and implementation of projects listed in Part I of Annex I to the Regulation (EU) No 1316/2013. To ensure the highest possible absorption of the transferred funds in all



Member States eligible for funding from the Cohesion fund, the Commission may organise additional calls.

7. The support from the Structural Funds for aid for the most deprived under the Investment for Growth and Jobs goal shall be not less than EUR 2 500 000 000 and may be increased by up to EUR 1 000 000 000 by additional support decided on a voluntary basis by Member States.

The Commission shall adopt a decision, by means of an implementing act, setting out the amount to be transferred from each Member State's Structural Funds allocation to aid for the most deprived for the whole period. The Structural Funds allocation of each Member State shall be reduced accordingly, on the basis of a pro-rata reduction by category of region.

The annual appropriations corresponding to the support from the Structural Funds referred to in the first subparagraph shall be entered in the relevant budget lines of the aid for the most deprived instrument with the 2014 budgetary exercise.

8. EUR 330 000 000 of the Structural Funds resources for the Investment for growth and jobs goal shall be allocated to innovative actions under direct or indirect management by the Commission in the area of sustainable urban development.

9. Resources for the European territorial cooperation goal shall amount to 2,75 % of the global resources available for budgetary commitment from the Funds for the period 2014-2020 (i.e., a total of EUR 8 948 259 330).

10. For the purposes of this Article, Articles 18, 91, 93, 95, 99, 120, Annex I and Annex X of this Regulation, Article 4 of the ERDF Regulation, Article 4 and Articles 16 to 23 of the ESF Regulation, Article 3(3) of the ETC Regulation, the outermost region of Mayotte shall be considered to be a NUTS level 2 region falling into the category of less developed regions. For the purposes of Article 3(1) and (2) of the ETC Regulation, the regions of Mayotte and Saint Martin shall be considered to be NUTS level 3 regions.

#### Article 93

##### **Non-transferability of resources between categories of regions**

1. The total appropriations allocated to each Member State in respect of less developed regions, transition regions and more developed regions shall not be transferable between those categories of regions.

2. By way of derogation from paragraph 1, the Commission may accept, in duly justified circumstances which are linked to the implementation of one or more thematic objectives, a proposal by a Member State in its first submission of the Partnership Agreement or, in duly justified circumstances, at the time of allocation of the performance reserve, or in a major

revision of the Partnership Agreement, to transfer up to 3 % of the total appropriation for a category of regions to other categories of regions.

#### Article 94

##### **Non-transferability of resources between goals**

1. The total appropriations allocated to each Member State in respect of the Investment for growth and jobs goal and the European territorial cooperation goal shall not be transferable between those goals.

2. By way of derogation from paragraph 1, the Commission may in order to uphold the effective contribution of the Funds to the missions referred to in Article 89(1), in duly justified circumstances, and subject to the condition laid down in paragraph 3, accept by means of an implementing act a proposal by a Member State in its first submission of the Partnership Agreement to transfer a part of its appropriations for the European territorial cooperation goal to the Investment for growth and jobs goal.

3. The share of the European territorial cooperation goal in the Member State making the proposal referred to in paragraph 2 shall be not less than 35 % of the total allocated to that Member State in respect of the Investment for growth and jobs goal and the European territorial cooperation goal, and after transfer shall be not less than 25 % of that total.

#### Article 95

##### **Additionality**

1. For the purposes of this Article and Annex X, the following definitions apply:

- (1) 'gross fixed capital formation' means all the resident producers' acquisitions, less disposals, of fixed assets during a given period and certain additions to the value of non-produced assets realised by the productive activity of producer or institutional units, as defined in Council Regulation (EC) No 2223/96 <sup>(1)</sup>;
- (2) 'fixed assets' means all tangible or intangible assets produced as outputs from processes of production that are themselves used repeatedly, or continuously, in processes of production for more than one year;
- (3) 'general government' means the totality of institutional units which, in addition to fulfilling their political responsibilities and their role of economic regulation, produce principally non-market services (possibly goods) for individual or collective consumption and redistribute income and wealth;
- (4) 'public or equivalent structural expenditure' means the gross fixed capital formation of the general government.

<sup>(1)</sup> Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community (OJ L 310, 30.11.1996, p. 1).

2. Support from the Funds for the Investment for growth and jobs goal shall not replace public or equivalent structural expenditure by a Member State.

3. Member States shall maintain for the period 2014-2020 a level of public or equivalent structural expenditure on average per year at least equal to the reference level set in the Partnership Agreement.

In setting the reference level referred to in the first subparagraph, the Commission and the Member States shall take into account the general macroeconomic conditions and specific or exceptional circumstances, such as privatisations, an exceptional level of public or equivalent structural expenditure by a Member State in the 2007-2013 programming period and the evolution of other public investment indicators. They shall also take into account changes in the national allocations from the Funds as compared to the years 2007-2013.

4. Verification of whether the level of public or equivalent structural expenditure under the Investment for growth and jobs goal has been maintained for the period shall only take place in those Member States in which less developed regions cover at least 15 % of the total population.

In those Member States in which less developed regions cover at least 65 % of the total population, the verification shall take place at national level.

In those Member States in which less developed regions cover more than 15 % and less than 65 % of the total population, the verification shall take place at regional level. For that purpose, those Member States shall provide to the Commission information about the expenditure in the less developed regions at each stage of the verification process.

5. The verification of whether the level of public or equivalent structural expenditure under the Investment for growth and jobs goal has been maintained shall take place at the time of submission of the Partnership Agreement (the "ex ante verification"), in 2018 (the "mid-term verification"), and in 2022 (the "ex post verification").

The detailed rules relating to the verification of additionality are set out in point 2 of Annex X.

6. If it is established by the Commission in the ex post verification that a Member State has not maintained the reference level of public or equivalent structural expenditure under the Investment for growth and jobs goal set out in the Partnership Agreement and as set out in Annex X, the Commission may, in relation to the degree of non-compliance, carry out a financial correction by adoption of a decision by means of implementing act. In determining whether to carry out a financial correction the Commission shall take into account whether the economic situation of the Member State

has significantly changed since the mid-term verification. The detailed rules relating to financial correction rates are set out in point 3 of Annex X.

7. Paragraphs 1 to 6 shall not apply to programmes under the European territorial cooperation goal.

## TITLE II

### PROGRAMMING

#### CHAPTER I

#### *General provisions on the Funds*

##### *Article 96*

#### **Content, adoption and amendment of operational programmes under the Investment for growth and jobs goal**

1. An operational programme shall consist of priority axes. A priority axis shall concern one Fund and one category of region, except in the case of the Cohesion Fund, and shall correspond, without prejudice to Article 59, to a thematic objective and comprise one or more of the investment priorities of that thematic objective, in accordance with the Fund-specific rules. Where appropriate and in order to increase its impact and effectiveness through a thematically coherent integrated approach, a priority axis may:

- (a) concern more than one category of region;
- (b) combine one or more complementary investment priorities from the ERDF, the Cohesion Fund and the ESF under one thematic objective;
- (c) in duly justified cases combine one or more complementary investment priorities from different thematic objectives in order to achieve the maximum contribution to that priority axis;
- (d) for the ESF, combine investment priorities from different thematic objectives set out in points (8), (9), (10) and (11) of the first paragraph of Article 9 in order to facilitate their contribution to other priority axes and in order to implement social innovation and transnational cooperation.

Member States may combine two or more of the options in points (a) to (d).

2. An operational programme shall contribute to the Union strategy for smart, sustainable and inclusive growth and to the achievement of economic, social and territorial cohesion and shall set out:

- (a) a justification for the choice of thematic objectives, corresponding investment priorities and financial allocations having regard to the Partnership Agreement, based on an identification of regional and, where appropriate, national needs including the need to address the challenges identified

in relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and the relevant Council recommendations adopted in accordance with Article 148(4) TFEU, taking into account the ex ante evaluation in accordance with Article 55;

(b) for each priority axis other than technical assistance:

- (i) the investment priorities and corresponding specific objectives;
- (ii) in order to strengthen the result-orientation of the programming, the expected results for the specific objectives, and the corresponding result indicators, with a baseline value and a target value, where appropriate quantified in accordance with the Fund-specific rules;
- (iii) a description of the type and examples of actions to be supported under each investment priority and their expected contribution to the specific objectives referred to in point (i) including the guiding principles for the selection of operations and where appropriate, the identification of main target groups, specific territories targeted, types of beneficiaries, the planned use of financial instruments and major projects;
- (iv) the output indicators, including the quantified target value, which are expected to contribute to the results, in accordance with the Fund-specific rules, for each investment priority;
- (v) identification of implementation steps and financial and output indicators, and where appropriate, result indicators, to be used as milestones and targets for the performance framework in accordance with Article 21(1) and Annex II;
- (vi) the corresponding categories of intervention based on a nomenclature adopted by the Commission, and an indicative breakdown of the programmed resources;
- (vii) where appropriate, a summary of the planned use of technical assistance including, where necessary, actions to reinforce the administrative capacity of authorities involved in the management and control of the programmes and beneficiaries;

(c) for each priority axis concerning technical assistance:

- (i) specific objectives;
- (ii) the expected results for each specific objective, and, where objectively justified given the content of the actions, the corresponding result indicators, with a baseline value and a target value, in accordance with the Fund-specific rules;

(iii) a description of actions to be supported and their expected contribution to the specific objectives referred to in point (i);

(iv) the output indicators which are expected to contribute to the results;

(v) the corresponding categories of intervention based on a nomenclature adopted by the Commission, and an indicative breakdown of the programmed resources.

Point (ii) shall not apply where the Union contribution to the priority axis or axes concerning technical assistance in an operational programme does not exceed EUR 15 000 000.

(d) a financing plan containing the following tables:

- (i) tables specifying for each year, in accordance with Articles 60, 120 and 121, the amount of the total financial appropriation envisaged for the support from each of the Funds, identifying the amounts related to the performance reserve;
- (ii) tables specifying, for the whole programming period, for the operational programme and for each priority axis, the amount of the total financial appropriation of the support from each of the Funds and the national co-financing, identifying the amounts related to the performance reserve. For priority axes, which concern several categories of region, the tables shall specify the amount of total financial appropriation from the Funds and the national co-financing for each category of region.

For priority axes, which combine investment priorities from different thematic objectives, the table shall specify the amount of total financial appropriation from each of the Funds and the national co-financing for each of the corresponding thematic objectives.

Where the national co-financing is made up of public and private co-financing, the table shall give the indicative breakdown between the public and the private components. It shall show, for information purposes, the envisaged participation from the EIB;

(e) a list of major projects for which the implementation is planned during the programming period.

The Commission shall adopt implementing acts concerning the nomenclature referred to in points (b)(vi) and (c)(v) of the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

3. Taking into account its content and objectives, an operational programme shall describe the integrated approach to territorial development, having regard to the Partnership Agreement, and showing how that operational programme contributes to the accomplishment of its objectives and expected results, specifying, where appropriate, the following:

- (a) the approach to the use of community-led local development instruments and the principles for identifying the areas where it will be implemented;
- (b) the indicative amount of the ERDF support for integrated actions for sustainable urban development, to be implemented in accordance with Article 7(3) of the ERDF Regulation and the indicative allocation of ESF support for integrated actions;
- (c) the approach to the use of the ITI instrument other than in cases covered by point (b), and their indicative financial allocation from each priority axis;
- (d) the arrangements for interregional and transnational actions, within the operational programmes, with beneficiaries located in at least one other Member State;
- (e) where Member States and regions participate in macro-regional strategies and sea-basin strategies, subject to the needs of the programme area as identified by the Member State, the contribution of the planned interventions under the programme to such strategies.

4. In addition, the operational programme shall specify the following:

- (a) where appropriate, the identification of whether and how it addresses the specific needs of geographical areas most affected by poverty or social exclusion, with special regard to marginalised communities, and persons with disabilities, and where relevant the contribution to the integrated approach set out in the Partnership Agreement;
- (b) where appropriate, the identification of whether and how it addresses the demographic challenges of regions or specific needs of areas which suffer from severe and permanent natural or demographic handicaps, as referred to in Article 174 TFEU and the contribution to the integrated approach set out in the Partnership Agreement to this end.

5. The operational programme shall identify:

- (a) the managing authority, the certifying authority, where applicable, and the audit authority;
- (b) the body to which payments are to be made by the Commission;

(c) the actions taken to involve the relevant partners referred to in Article 5 in the preparation of the operational programme, and the role of those partners in the implementation, monitoring and evaluation of the operational programme.

6. The operational programme shall also set out the following, having regard to the content of the Partnership Agreement and taking into account the institutional and legal framework of the Member States:

- (a) mechanisms to ensure coordination between the Funds, the EAFRD, the EMFF and other Union and national funding instruments, and with the EIB taking into account the relevant provisions laid down in the CSF;
- (b) for each ex ante conditionality, established in accordance with Article 19 and Annex XI, which is applicable to the operational programme, an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the Partnership Agreement and operational programme, and where ex ante conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality, the bodies responsible and a timetable for such actions in accordance with the summary submitted in the Partnership Agreement;
- (c) a summary of the assessment of the administrative burden on beneficiaries and, where necessary, the actions planned, accompanied by an indicative timeframe, to reduce the administrative burden.

7. Each operational programme, except those where technical assistance is undertaken under a specific operational programme, shall, subject to the Member State's duly justified assessment of their relevance to the content and objectives of the operational programmes, include a description of:

- (a) the specific actions to take into account environmental protection requirements, resource efficiency, climate change mitigation and adaptation, disaster resilience and risk prevention and management, in the selection of operations;
- (b) the specific actions to promote equal opportunities and prevent discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, design and implementation of the operational programme and in particular in relation to access to funding, taking account of the needs of the various target groups at risk of such discrimination and in particular the requirements to ensure accessibility for persons with disabilities;
- (c) the contribution of the operational programme to the promotion of equality between men and women and, where appropriate, the arrangements to ensure the integration of gender perspective at operational programme and operation level.

Member States may submit an opinion from the national equality bodies on the measures set out in points (b) and (c) of the first subparagraph with the proposal for an operational programme under the Investment for growth and jobs goal.

8. When a Member State prepares a maximum of one operational programme for each Fund, the elements of the operational programme falling under point (a) of the first subparagraph of paragraph 2, points (a), (c) and (d) of paragraph 3, paragraph 4 and paragraph 6 may be incorporated solely under the relevant provisions of the Partnership Agreement.

9. The operational programme shall be prepared in accordance with a model. The Commission shall, in order to ensure uniform conditions for the implementation of this Article adopt an implementing act laying down that model. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

10. The Commission shall adopt a decision, by means of implementing acts, approving all the elements, including any of its future amendments, of the operational programme falling under this Article, except those falling under points (b)(vi), (c)(v) and (e) of the first subparagraph of paragraph 2, paragraphs 4 and 5, points (a) and (c) of paragraph 6 and paragraph 7, which remain under the responsibility of the Member States.

11. The managing authority shall notify the Commission of any decision amending the elements of the operational programme not covered by the Commission decision, referred to in paragraph 10, within one month of the date of that amending decision. The amending decision shall specify the date of its entry into force, which shall not be earlier than the date of its adoption.

#### Article 97

#### **Specific provisions on the programming of support for the joint instruments for uncapped guarantees and securitisation under the Investment for growth and jobs goal**

In accordance with Article 28, operational programmes referred to in point (b) of the first subparagraph of Article 39(4) shall include only the elements referred to in point (b)(i), (ii) and (iv) and point (d) of the first subparagraph of Article 96(2), Article 96(5) and point (b) of Article 96(6).

#### Article 98

#### **Joint support from the Funds under the Investment for growth and jobs goal**

1. The Funds may jointly provide support for operational programmes under the Investment for growth and jobs goal.

2. The ERDF and the ESF may finance, in a complementary manner and subject to a limit of 10 % of Union funding for

each priority axis of an operational programme, a part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the satisfactory implementation of the operation and are directly linked to it.

3. Paragraphs 1 and 2 shall not apply to programmes under the European territorial cooperation goal.

#### Article 99

#### **Geographical scope of operational programmes under the Investment for growth and jobs goal**

Unless otherwise agreed between the Commission and the Member State, operational programmes for the ERDF and the ESF shall be drawn up at the appropriate geographical level and at least at NUTS level 2, in accordance with the institutional and legal framework of the Member State.

Operational programmes with support from the Cohesion Fund shall be drawn up at national level.

#### CHAPTER II

#### **Major projects**

#### Article 100

#### **Content**

As part of an operational programme or operational programmes, which have been subject to a Commission decision under Article 96(10) of this Regulation or under Article 8(12) of the ETC Regulation, the ERDF and the Cohesion Fund may support an operation comprising a series of works, activities or services intended in itself to accomplish an indivisible task of a precise economic or technical nature which has clearly identified goals and for which the total eligible cost exceeds EUR 50 000 000 and in the case of operations contributing to the thematic objective under point (7) of the first paragraph of Article 9 where the total eligible cost exceeds EUR 75 000 000 (the 'major project'). Financial instruments shall not be considered to be major projects.

#### Article 101

#### **Information necessary for the approval of a major project**

Before a major project is approved, the managing authority shall ensure that the following information is available:

- (a) details concerning the body to be responsible for implementation of the major project, and its capacity;
- (b) a description of the investment and its location;
- (c) the total cost and total eligible cost, taking account of the requirements set out in Article 61;
- (d) feasibility studies carried out, including the options analysis, and the results;

- (e) a cost-benefit analysis, including an economic and a financial analysis, and a risk assessment;
- (f) an analysis of the environmental impact, taking into account climate change adaptation and mitigation needs, and disaster resilience;
- (g) an explanation as to how the major project is consistent with the relevant priority axes of the operational programme or operational programmes concerned, and its expected contribution to achieving the specific objectives of those priority axes and the expected contribution to socio-economic development;
- (h) the financing plan showing the total planned financial resources and the planned support from the Funds, the EIB, and all other sources of financing, together with physical and financial indicators for monitoring progress, taking account of the identified risks;
- (i) the timetable for implementing the major project and, where the implementation period is expected to be longer than the programming period, the phases for which support from the Funds is requested during the programming period.
- (a) the document referred to in point (c) of Article 125(3) setting out:
- (i) the body to be responsible for implementation of the major project;
- (ii) a description of the investment, its location, timetable and expected contribution of the major project to the specific objectives of the relevant priority axis or axes;
- (iii) the total cost and total eligible cost, taking account of the requirements set out in Article 61;
- (iv) the financing plan, and the physical and financial indicators for monitoring progress, taking account of the identified risks;
- (b) the quality review of the independent experts, providing clear statements on the investment's feasibility and the economic viability of the major project.

The Commission shall adopt implementing acts establishing the methodology to be used based on recognised best practices, in carrying out the cost-benefit analysis referred to in point (e) of the first paragraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

At the initiative of a Member State, the information in points (a) to (i) of the first paragraph may be assessed by independent experts supported by technical assistance of the Commission or, in agreement with the Commission, by other independent experts ("quality review"). In other cases, the Member State shall submit to the Commission the information set out in points (a) to (i) of the first paragraph as soon as it is available.

The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the methodology to be used in carrying out the quality review of a major project.

The Commission shall adopt implementing acts establishing the format for submission of the information set out in points (a) to (i) of the first paragraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

#### Article 102

##### Decision on a major project

1. Where a major project has been appraised positively by a quality review by independent experts, on the basis of their assessment of the information referred to in the first paragraph of Article 101, the managing authority may proceed with the selection of the major project in accordance with Article 125(3). The managing authority shall notify the Commission of the selected major project. That notification shall consist of the following elements:

The financial contribution to the major project selected by the Member State shall be deemed to be approved by the Commission in the absence of a decision, by means of an implementing act, refusing the financial contribution within three months of the date of the notification referred to in the first subparagraph. The Commission shall refuse the financial contribution only on the grounds that it has established a significant weakness in the independent quality review.

The Commission shall adopt implementing acts establishing the format for the notification referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

2. In cases other than those referred to in paragraph 1 of this Article, the Commission shall appraise the major project on the basis of the information referred to in Article 101 in order to determine whether the requested financial contribution for the major project selected by the managing authority in accordance with Article 125(3) is justified. The Commission shall adopt a decision on the approval of the financial contribution to the selected major project, by means of an implementing act, no later than three months after the date of submission of the information referred to in Article 101.

3. The approval by the Commission under the second subparagraph of paragraph 1 and paragraph 2 shall be conditional on the first works contract being concluded, or, in the case of operations implemented under PPP structures, on the signing of the PPP agreement between the public body and the private sector body, within three years of the date of the approval. At the duly motivated request of the Member State, in particular in the case of delays resulting from administrative and legal proceedings related to the implementation of major projects, and made within the three year period, the Commission may adopt a decision, by means of an implementing act, on the extension of the period by not more than two years.

4. Where the Commission does not approve the financial contribution to the selected major project, it shall give in its decision the reasons for its refusal.

5. Major projects notified to the Commission under paragraph 1 or submitted for approval under paragraph 2 shall be contained in the list of major projects in an operational programme.

6. Expenditure relating to a major project may be included in a request for payment after the notification referred to in paragraph 1 or after the submission for approval referred to in paragraph 2. Where the Commission does not approve the major project selected by the managing authority, the declaration of expenditure following the adoption of the Commission decision shall be rectified accordingly.

#### Article 103

### Decision on a major project subject to phased implementation

1. By way of derogation from the third paragraph of Article 101 and Article 102(1) and (2), the procedures set out in paragraphs 2, 3 and 4 of this Article shall apply to an operation which satisfies the following conditions:

- (a) the operation consists of the second or subsequent phase of a major project under the previous programming period for which the preceding phase or phases are approved by the Commission not later than 31 December 2015 pursuant to Regulation (EC) No 1083/2006; or in the case of Member States which acceded to the Union after 1 January 2013, no later than 31 December 2016;
- (b) the sum of the total eligible costs of all phases of the major project exceeds the respective levels set out in Article 100;
- (c) the major project application and assessment by the Commission under the previous programming period covered all the planned phases;
- (d) there are no substantial changes in the information referred to in the first paragraph of Article 101 of this Regulation for the major project compared to the information provided for the major project application submitted under Regulation (EC) No 1083/2006, in particular as regards the total eligible cost;
- (e) the phase of the major project to be implemented under the previous programming period is or will be ready to be used for its intended purpose as specified in the Commission decision by the deadline of the submission of the closure documents for the relevant operational programme or programmes.

2. The managing authority may proceed with the selection of the major project in accordance with Article 125(3) and submit the notification containing all the elements set out in point (a)

of the first subparagraph of Article 102(1) together with its confirmation that the condition under point (d) of paragraph 1 of this Article is fulfilled. No quality review of the information by independent experts shall be required.

3. The financial contribution to the major project selected by the managing authority shall be deemed to be approved by the Commission in the absence of a decision, by means of an implementing act, refusing the financial contribution to the major project within three months of the date of the notification referred to in paragraph 2. The Commission shall refuse the financial contribution only on the grounds that there have been substantial changes in the information referred to in point (d) of paragraph 1 or that the major project is not consistent with the relevant priority axis of the operational programme or programmes concerned.

4. Article 102(3) to (6) shall apply to decisions on a major project subject to phased implementation.

#### CHAPTER III

### Joint action plan

#### Article 104

#### Scope

1. A joint action plan is an operation the scope of which is defined and which is managed in relation to the outputs and results to be achieved. It comprises a project or a group of projects, not consisting of the provision of infrastructure, carried out under the responsibility of the beneficiary, as part of an operational programme or programmes. The outputs and results of a joint action plan shall be agreed between a Member State and the Commission and shall contribute to specific objectives of the operational programmes and form the basis of support from the Funds. Results shall refer to direct effects of the joint action plan. The beneficiary of a joint action plan shall be a public law body. Joint action plans shall not be considered to be major projects.

2. The public expenditure allocated to a joint action plan shall be a minimum of EUR 10 000 000 or 20 % of the public support of the operational programme or programmes, whichever is lower. For the purpose of undertaking a pilot project, the minimum public expenditure allocated to one joint action plan for each operational programme may be reduced to EUR 5 000 000.

3. Paragraph 2 shall not apply to operations supported under the YEI.

#### Article 105

### Preparation of joint action plans

1. The Member State, the managing authority or any designated public law body may submit a proposal for a joint action plan at the same time as or subsequent to the submission of the operational programmes concerned. That proposal shall contain all the information referred to in Article 106.

2. A joint action plan shall cover part of the period between 1 January 2014 and 31 December 2023. The outputs and results of a joint action plan shall give rise to reimbursement only if attained after the date of the decision of approval of the joint action plan referred to in Article 107 and before the end of the implementation period defined in that decision.

#### Article 106

##### Content of joint action plans

A joint action plan shall contain:

- (1) an analysis of the development needs and objectives justifying it, taking into account the objectives of the operational programmes and, where applicable, the relevant country-specific recommendations and the broad guidelines of the economic policies of the Member States and of the Union under Article 121(2) TFEU and the relevant Council recommendations which the Member States are to take into account in their employment policies under Article 148(4) TFEU;
- (2) the framework describing the relationship between the general and specific objectives of the joint action plan, the milestones and the targets for outputs and results, and the projects or types of projects envisaged;
- (3) the common and specific indicators used to monitor outputs and results, where relevant, by priority axis;
- (4) information on its geographic coverage and target groups;
- (5) its expected implementation period;
- (6) an analysis of its effects on the promotion of equality between men and women and the prevention of discrimination;
- (7) an analysis of its effects on the promotion of sustainable development, where appropriate;
- (8) its implementing provisions, including the following:
  - (a) the designation of the beneficiary responsible for the implementation of the joint action plan, providing guarantees of its competence in the domain concerned as well as its administrative and financial management capacity;

- (b) the arrangements for steering the joint action plan, in accordance with Article 108;
- (c) the arrangements for monitoring and evaluating the joint action plan including arrangements ensuring the quality, collection and storage of data on the achievement of milestones, outputs and results;
- (d) the arrangements ensuring the dissemination of information and communication in relation to the joint action plan and to the Funds;

(9) its financial arrangements, including the following:

- (a) the costs of achieving milestones, outputs and result targets with reference to point (2), based on the methods set out in Article 67(5) of this Regulation and in Article 14 of the ESF Regulation;
- (b) an indicative schedule of payments to the beneficiary linked to the milestones and targets;
- (c) the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure.

The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the format of the model for the joint action plan. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

#### Article 107

##### Decision on the joint action plan

1. The Commission shall appraise the joint action plan on the basis of the information referred to in Article 106 in order to determine whether support from the Funds is justified.

Where the Commission, within two months following the submission of a joint action plan proposal, considers that it does not meet the appraisal requirements referred to in Article 104, it shall make observations to the Member State. The Member State shall provide to the Commission all necessary additional information requested and, where appropriate, revise the joint action plan accordingly.

2. Provided that any observations have been adequately taken into account, the Commission shall adopt a decision, by means of an implementing act, approving the joint action plan no later than four months after its submission by the Member State but not before the adoption of the operational programmes concerned.



3. The decision referred to in paragraph 2 shall indicate the beneficiary and the general and specific objectives of the joint action plan, the milestones and targets for outputs and results, the costs of achieving those milestones, outputs and result targets, and the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure, the implementation period of the joint action plan and, where relevant, the geographical coverage and target groups of the joint action plan.

4. Where the Commission refuses, by means of an implementing act, to allow support from the Funds to be allocated to a joint action plan, it shall notify the Member State of its reasons within the period laid down in paragraph 2.

#### Article 108

### Steering committee and amendment of the joint action plan

1. The Member State or the managing authority shall set up a steering committee for the joint action plan, distinct from the monitoring committee of the relevant operational programmes. The steering committee shall meet at least twice a year and shall report to the managing authority. The managing authority shall inform the relevant monitoring committee of the results of the work carried out by the steering committee and the progress of the implementation of the joint action plan in accordance with point (e) of Article 110(1) and point (a) of Article 125(2).

The composition of the steering committee shall be decided by the Member State in agreement with the relevant managing authority, respecting the principle of partnership.

The Commission may participate in the work of the steering committee in an advisory capacity.

2. The steering committee shall carry out the following activities:

- (a) review progress towards achieving the milestones, outputs and results of the joint action plan;
- (b) consider and approve any proposal to amend the joint action plan in order to take account of any issues affecting its performance.

3. Requests for amendment of joint action plans submitted by a Member State to the Commission shall be duly substantiated. The Commission shall assess whether the request for amendment is justified, taking account of the information provided by the Member State. The Commission may make observations and the Member State shall provide to the Commission all necessary additional information. The Commission shall adopt a decision, by means of an implementing act, on a request for amendment no later than three months after its submission by the Member State, provided that any observations made by the Commission have been

satisfactorily taken into account. The amendment shall enter into force from the date of the decision, unless otherwise set out in the decision.

#### Article 109

### Financial management and control of the joint action plan

1. Payments to the beneficiary of a joint action plan shall be treated as lump sums or standard scales of unit costs. The ceiling for lump sums set out in point (c) of the first subparagraph of Article 67(1) shall not apply.

2. The financial management, control and audit of the joint action plan shall be aimed exclusively at verifying that the conditions for payments defined in the decision approving the joint action plan have been fulfilled.

3. The beneficiary of a joint action plan and the bodies acting under its responsibility may apply their accounting practices for the costs of implementing operations. Those accounting practices and the costs actually incurred by the beneficiary shall not be subject to audit by the audit authority or the Commission.

#### TITLE III

### MONITORING, EVALUATION, INFORMATION AND COMMUNICATION

#### CHAPTER I

### Monitoring and evaluation

#### Article 110

### Functions of the monitoring committee

1. The monitoring committee shall examine in particular:
- (a) any issues that affect the performance of the operational programme;
  - (b) progress made in implementation of the evaluation plan and the follow-up given to findings of evaluations;
  - (c) implementation of the communication strategy;
  - (d) implementation of major projects;
  - (e) implementation of joint action plans;
  - (f) actions to promote equality between men and women, equal opportunities, and non-discrimination, including accessibility for persons with disabilities;
  - (g) actions to promote sustainable development;
  - (h) where applicable ex ante conditionalities are not fulfilled at the date of the submission of the Partnership Agreement and operational programme, progress on actions to fulfil the applicable ex ante conditionalities;
  - (i) financial instruments.

2. By way of derogation from Article 49(3), the monitoring committee shall examine and approve:

- (a) the methodology and criteria used for selection of operations;
- (b) the annual and final implementation reports;
- (c) the evaluation plan for the operational programme and any amendment of the evaluation plan, including where either is part of a common evaluation plan pursuant to Article 114(1);
- (d) the communication strategy for the operational programme and any amendment of the strategy;
- (e) any proposal by the managing authority for any amendment to the operational programme.

#### Article 111

#### **Implementation reports for the Investment for growth and jobs goal**

1. By 31 May 2016 and by the same date of each subsequent year until and including 2023 the Member State shall submit to the Commission an annual implementation report in accordance with Article 50(1). The report submitted in 2016 shall cover the financial years 2014 and 2015, as well as the period between the starting date for eligibility of expenditure and 31 December 2013.

2. For the reports submitted in 2017 and 2019, the deadline referred to in paragraph 1 shall be 30 June.

3. Annual implementation reports shall set out information on:

- (a) implementation of the operational programme in accordance with Article 50(2);
- (b) progress in preparation and implementation of major projects and joint action plans.

4. The annual implementation reports submitted in 2017 and 2019 shall set out and assess the information required under Article 50(4) and (5) respectively and the information set out in paragraph 3 of this Article together with the following information:

- (a) progress in the implementation of the evaluation plan and the follow-up given to the findings of evaluations;
- (b) the results of the information and publicity measures of the Funds carried out under the communication strategy;
- (c) the involvement of the partners in the implementation, monitoring and evaluation of the operational programme.

The annual implementation reports submitted in 2017 and 2019 may, depending on the content and objectives of operational programmes, set out information and assess the following:

- (a) progress in the implementation of the integrated approach to territorial development, including development of regions facing demographic challenges and permanent or natural handicaps, sustainable urban development, and community-led local development under the operational programme;
- (b) progress in the implementation of actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the Funds;
- (c) progress in the implementation of any interregional and transnational actions;
- (d) where appropriate, the contribution to macro-regional and sea basin strategies;
- (e) the specific actions taken to promote equality between men and women and to prevent discrimination, in particular accessibility for persons with disabilities, and the arrangements implemented to ensure the integration of the gender perspective in the operational programme and operations;
- (f) actions taken to promote sustainable development in accordance with Article 8;
- (g) progress in the implementation of actions in the field of social innovation, where appropriate;
- (h) progress in the implementation of measures to address the specific needs of geographical areas most affected by poverty or of target groups at highest risk of poverty, discrimination or social exclusion, with special regard to marginalised communities and persons with disabilities, long term unemployed and young people not in employment, including, where appropriate, the financial resources used.

By way of derogation from the first and second subparagraphs, and in order to ensure consistency between the Partnership Agreement and the progress report, Member States with no more than one operational programme per Fund may include the information relating to ex ante conditionalities referred to in Article 50(3), the information required by Article 50(4) and the information referred to in points (a), (b), (c) and (h) of the second subparagraph of this paragraph in the progress report instead of the annual implementation reports submitted in 2017 and 2019 respectively and the final implementation report, without prejudice to point (b) of Article 110(2).

5. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the models for the annual and final implementation reports. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

#### Article 112

##### Transmission of financial data

1. By 31 January, 31 July and 31 October, the Member State shall transmit electronically to the Commission for monitoring purposes, for each operational programme and by priority axis:

- (a) the total and public eligible cost of the operations and the number of operations selected for support;
- (b) the total eligible expenditure declared by beneficiaries to the managing authority.

2. In addition, the transmission made by 31 January shall contain the above data broken down by category of intervention. That transmission shall be considered to fulfil the requirement for the submission of financial data referred to in Article 50(2).

3. A forecast of the amount for which Member States expect to submit payment applications for the current financial year and the subsequent financial year shall accompany the transmissions to be made by 31 January and 31 July.

4. The cut-off date for the data submitted under this Article shall be the end of the month preceding the month of submission.

5. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the model to be used when submitting the financial data to the Commission for monitoring purposes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 113

##### Cohesion Report

The report of the Commission referred to in Article 175 TFEU shall include:

- (a) a record of progress made towards achieving economic, social and territorial cohesion, including the socio-economic situation and development of the regions, as well as the integration of the Union's priorities;
- (b) a record of the role of the Funds, EIB funding and the other instruments in, as well as the effect of other Union and national policies on, the progress made;

- (c) where appropriate an indication of future Union measures and policies necessary to strengthen economic, social and territorial cohesion, as well as to deliver the Union's priorities.

#### Article 114

##### Evaluation

1. An evaluation plan shall be drawn up by the managing authority or Member State for one or more operational programmes. The evaluation plan shall be submitted to the monitoring committee no later than one year after the adoption of the operational programme.

2. By 31 December 2022, managing authorities shall submit to the Commission, for each operational programme, a report summarising the findings of evaluations carried out during the programming period and the main outputs and results of the operational programme, providing comments on the reported information.

3. The Commission shall carry out ex post evaluations in close cooperation with the Member States and managing authorities.

4. Paragraphs 1 and 2 of this Article shall not apply to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).

#### CHAPTER II

##### Information and communication

#### Article 115

##### Information and communication

1. Member States and managing authorities shall be responsible for:

- (a) drawing up communication strategies;
- (b) ensuring the establishment of a single website or a single website portal providing information on, and access to, all operational programmes in that Member State, including information about the timing of implementation of programming and any related public consultation processes;
- (c) informing potential beneficiaries about funding opportunities under operational programmes;
- (d) publicising to Union citizens the role and achievements of cohesion policy and of the Funds through information and communication actions on the results and impact of Partnership Agreements, operational programmes and operations.

2. Member States or managing authorities shall, in order to ensure transparency concerning support from the Funds, maintain a list of operations by operational programme and by Fund in a spreadsheet data format, which allows data to be sorted, searched, extracted, compared and easily published on the internet, for instance in CSV or XML format. The list of operations shall be accessible through the single website or the single website portal providing a list and summary of all operational programmes in that Member State.

In order to encourage the use of the list of operations subsequently by the private sector, civil society or national public administration, the website may clearly indicate the applicable licensing rules under which data are published.

The list of operations shall be updated at least every six months.

The minimum information to be set out in the list of operations is laid down in Annex XII.

3. Detailed rules concerning the information and communication measures for the public and information measures for applicants and for beneficiaries are laid down in Annex XII.

4. The Commission shall adopt implementing acts concerning the technical characteristics of information and communication measures for the operation and instructions for creating the emblem and a definition of the standard colours. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 116

##### Communication strategy

1. The Member State or the managing authorities shall draw up a communication strategy for each operational programme. A common communication strategy may be drawn up for several operational programmes. The communication strategy shall take into account the size of the operational programme or programmes concerned, in accordance with the principle of proportionality.

The communication strategy shall include the elements set out in Annex XII.

2. The communication strategy shall be submitted to the monitoring committee for approval in accordance with point (d) of Article 110(2) no later than six months after the adoption of the operational programme or programmes concerned.

Where a common communication strategy is drawn up for several operational programmes and concerns several monitoring committees, the Member State may designate one monitoring committee to be responsible, in consultation with the other relevant monitoring committees, for the approval of the

common communication strategy and for the approval of any subsequent amendments of that strategy.

Where necessary, the Member State or managing authorities may amend the communication strategy during the programming period. The amended communication strategy shall be submitted by the managing authority to the monitoring committee for approval in accordance with point (d) of Article 110(2).

3. By way of derogation from the third subparagraph of paragraph 2, the managing authority shall inform the monitoring committee or committees responsible at least once a year on the progress in the implementation of the communication strategy as referred to in point (c) of Article 110(1) and on its analysis of the results as well as on the planned information and communication activities to be carried out in the following year. The monitoring committee shall, if it considers it to be appropriate, give an opinion on the planned activities for the following year.

#### Article 117

##### Information and communication officers and their networks

1. Each Member State shall designate an information and communication officer to coordinate information and communication actions in relation to one or more Funds, including relevant programmes under the European territorial cooperation goal, and shall inform the Commission accordingly.

2. The information and communication officer shall be responsible for the coordination of the national network of Fund communicators, where such a network exists, the creation and maintenance of the website or website portal referred to in Annex XII and the provision of an overview of communication measures undertaken at Member State level.

3. Each managing authority shall designate one person to be responsible for information and communication at operational programme level and shall inform the Commission of those designated. Where appropriate, one person may be designated for several operational programmes.

4. Union networks comprising the members designated by the Member States shall be set up by the Commission to ensure exchange of information on the results of the implementation of the communication strategies, the exchange of experience in implementing the information and communication measures, and the exchange of good practices.

#### TITLE IV

##### TECHNICAL ASSISTANCE

#### Article 118

##### Technical assistance at the initiative of the Commission

The Funds, taking into account the deductions made in accordance with Article 91(3), may support technical assistance up to a ceiling of 0,35 % of their respective annual allocation.

## Article 119

**Technical assistance of the Member States**

1. The amount of the Funds allocated to technical assistance shall be limited to 4 % of the total amount of the Funds allocated to operational programmes in a Member State under each category of region, where applicable, of the Investment for growth and jobs goal.

The specific allocation for YEI may be taken into account by a Member State in the calculation of the limit to the total amount of the Funds allocated to the technical assistance of the Member State.

2. Each Fund may support technical assistance operations eligible under any of the other Funds. Without prejudice to paragraph 1, the allocation for technical assistance from a Fund shall not exceed 10 % of the total allocation of that Fund to operational programmes in a Member State under each category of region, where applicable, of the Investment for growth and jobs goal.

3. By way of derogation from Article 70(1) and (2), technical assistance operations may be implemented outside the programme area, but within the Union, provided that the operations are for the benefit of the operational programme, or, in the case of a technical assistance operational programme, for the other programmes concerned.

4. In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations relating to more than one category of region, the expenditure relating to the operations may be implemented under a priority axis combining different categories of region and attributed on a pro rata basis taking into account the allocation under each category of region as a share of the total allocation to the Member State.

5. By way of derogation from paragraph 1, where the total amount of the Funds allocated to a Member State under the Investment for growth and jobs goal does not exceed EUR 1 000 000 000 the amount allocated to technical assistance may increase up to 6 % of that total amount or EUR 50 000 000, whichever is the lower.

6. Technical assistance shall take the form of a mono-fund priority axis within an operational programme or of a specific operational programme, or both.

## TITLE V

**FINANCIAL SUPPORT FROM THE FUNDS**

## Article 120

**Determination of co-financing rates**

1. The Commission decision adopting an operational programme shall fix the co-financing rate and the maximum

amount of support from Funds for each priority axis. Where a priority axis concerns more than one category of regions or more than one Fund, the Commission decision shall, where necessary, fix the co-financing rate by category of region and Fund.

2. For each priority axis, the Commission decision shall set out whether the co-financing rate for the priority axis is to be applied to:

(a) total eligible expenditure, including public and private expenditure; or

(b) eligible public expenditure.

3. The co-financing rate at the level of each priority axis and, where relevant, by category of region and Fund, of operational programmes under the Investment for growth and jobs goal shall be no higher than:

(a) 85 % for the Cohesion Fund;

(b) 85 % for the less developed regions of Member States whose average GDP per capita for the period 2007 - 2009 was below 85 % of the EU-27 average during the same period and for the outermost regions including the additional allocation for outermost regions in accordance with point (e) of Article 92(1) and Article 4(2) of the ETC Regulation;

(c) 80 % for the less developed regions of Member States other than those referred to in point (b), and for all regions whose GDP per capita used as an eligibility criterion for the 2007-2013 programming period was less than 75 % of the average of the EU-25 but whose GDP per capita is above 75 % of the GDP average of the EU-27, as well as for regions defined in Article 8(1) of Regulation (EU) 1083/2006 receiving transitional support for the 2007-2013 programming period;

(d) 60 % for the transition regions other than those referred to in point (c);

(e) 50 % for the more developed regions other than those referred to in point (c).

For the period from 1 January 2014 to 30 June 2017 the co-financing rate at the level of each priority axis for all operational programmes in Cyprus shall be not higher than 85 %.

The Commission shall carry out a review to assess the justification for maintaining the co-financing rate, referred to in the second subparagraph, after 30 June 2017 and shall if necessary make a legislative proposal before 30 June 2016.

The co-financing rate at the level of each priority axis of operational programmes under the European territorial cooperation goal shall be no higher than 85 %.

The maximum co-financing rate under points (b), (c), (d) and (e) of the first subparagraph shall be increased for each priority axis implementing the YEI and where a priority axis is dedicated to social innovation or to transnational cooperation, or a combination of both. That increase shall be determined in accordance with the Fund-specific rules.

4. The co-financing rate of the additional allocation in accordance with point (e) of Article 92(1) shall be no higher than 50 % for NUTS level 2 regions fulfilling the criteria laid down in Protocol No 6 to the 1994 Act of Accession.

5. The maximum co-financing rate under paragraph 3 at the level of a priority axis shall be increased by ten percentage points, where the whole of a priority axis is delivered through financial instruments, or through community-led local development.

6. The contribution from the Funds for each priority axis shall not be less than 20 % of the eligible public expenditure.

7. A separate priority axis with a co-financing rate of up to 100 % may be established within an operational programme to support operations implemented through financial instruments set up at Union level and managed directly or indirectly by the Commission. Where a separate priority axis is established for this purpose, the support under this axis may not be implemented by any other means.

#### *Article 121*

#### **Modulation of the co-financing rates**

The co-financing rate from the Funds to a priority axis may be modulated to take account of:

- (1) the importance of the priority axis for the delivery of the Union strategy for smart, sustainable and inclusive growth, having regard to the specific gaps to be addressed;
- (2) the protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action and the polluter pays principle;
- (3) the rate of mobilisation of private financing;
- (4) the coverage of areas with severe and permanent natural or demographic handicaps defined as follows:
  - (a) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland;
  - (b) mountainous areas as defined by the national legislation of the Member State;
  - (c) sparsely (i.e. less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas;

- (d) the inclusion of the outermost regions as referred to in Article 349 TFEU.

### **PART FOUR**

#### **GENERAL PROVISIONS APPLICABLE TO THE FUNDS AND THE EMFF**

##### TITLE I

##### MANAGEMENT AND CONTROL

##### CHAPTER I

##### **Management and control systems**

##### *Article 122*

##### **Responsibilities of Member States**

1. Member States shall ensure that management and control systems for operational programmes are set up in accordance with Articles 72, 73 and 74.
2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following:

- (a) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- (b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
- (c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported, the data to be provided and on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States.

The Commission shall adopt implementing acts setting out the frequency of the reporting of irregularities and the reporting format to be used. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

3. Member States shall ensure that no later than 31 December 2015, all exchanges of information between beneficiaries and a managing authority, a certifying authority, an audit authority and intermediate bodies can be carried out by means of electronic data exchange systems.

The systems referred to in the first subparagraph shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first subparagraph only once.

The Commission shall adopt implementing acts laying down detailed rules concerning the exchanges of information under this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4. Paragraph 3 shall not apply to the EMFF.

## CHAPTER II

### **Management and control authorities**

#### *Article 123*

#### **Designation of authorities**

1. Each Member State shall designate, for each operational programme, a national, regional or local public authority or body or a private body as managing authority. The same managing authority may be designated for more than one operational programme.

2. The Member State shall designate, for each operational programme, a national, regional or local public authority or body as a certifying authority, without prejudice to paragraph 3. The same certifying authority may be designated for more than one operational programme.

3. The Member State may designate for an operational programme a managing authority, which is a public authority or body, to carry out, in addition, the functions of the certifying authority.

4. The Member State shall designate, for each operational programme, a national, regional or local public authority or body, functionally independent from the managing authority and the certifying authority, as audit authority. The same audit authority may be designated for more than one operational programme.

5. In the case of the Funds relating to the Investment for growth and jobs goal and in the case of the EMFF, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body.

Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000, the audit authority may be part of the same public authority or body as the managing authority either if, pursuant to the applicable provisions for the previous programming period, the Commission has informed the Member State prior to the date of adoption of the operational programme concerned of its conclusion that it can rely principally on its audit opinion, or if the Commission is satisfied on the basis of the experience of the previous programming period that the institutional organisation and accountability of the audit authority provide adequate guarantees of its functional independence and reliability.

6. The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing or the certifying authority under the responsibility of that authority. The relevant arrangements between the managing authority or certifying authority and the intermediate bodies shall be formally recorded in writing.

7. The Member State or the managing authority may entrust the management of part of an operational programme to an intermediate body by way of an agreement in writing between the intermediate body and the Member State or managing authority (a 'global grant'). The intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as of its administrative and financial management capacity.

8. The Member State may, at its own initiative, designate a coordinating body whose responsibility shall be to liaise with and provide information to the Commission, to coordinate activities of the other relevant designated bodies and to promote the harmonised application of applicable law.

9. The Member State shall lay down in writing rules governing its relationship with the managing authorities, certifying authorities and audit authorities, the relations between such authorities, and the relationship of such authorities with the Commission.

#### *Article 124*

### **Procedure for the designation of the managing authority and the certifying authority**

1. The Member State shall notify the Commission of the date and form of the designations, which shall be carried out at an appropriate level, of the managing authority and, where appropriate, of the certifying authority prior to the submission of the first application for interim payment to the Commission.

2. The designations referred to in paragraph 1 shall be based on a report and an opinion of an independent audit body that assesses the fulfilment by the authorities of the criteria relating to the internal control environment, risk management, management and control activities, and monitoring set out in Annex XIII. The independent audit body shall be the audit authority, or another public or private law body with the necessary audit capacity, which is independent of the managing authority and, where applicable, of the certifying authority, and which shall carry out its work taking account of internationally accepted audit standards. Where the independent audit body concludes that the part of the management and control system, concerning the managing authority or the certifying authority, is essentially the same as for the previous programming period, and that there is evidence, on the basis of audit work done in accordance with the relevant provisions of Regulation (EC) No 1083/2006 and Council Regulation (EC) No 1198/2006<sup>(1)</sup>, of their effective functioning during that period, it may conclude that the relevant criteria are fulfilled without carrying out additional audit work.

3. Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000, the Commission may request, within one month of notification of the designations referred to in paragraph 1, the report and the opinion of the independent audit body referred to in paragraph 2 and the description of the functions and procedures in place for the managing authority or, where appropriate, the certifying authority. The Commission shall decide whether to request those documents on the basis of its risk assessment, taking into account information on significant changes in the functions and procedures of the managing authority or, where appropriate, the certifying authority compared to those in place for the previous programming period, and relevant evidence of their effective functioning.

The Commission may make observations within two months of receipt of the documents referred to in the first subparagraph. Without prejudice to Article 83, the examination of those documents shall not interrupt the treatment of applications for interim payments.

4. Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000 and there are significant changes in the functions and procedures of the managing authority or, where appropriate, of the certifying authority compared to those in place for the previous programming period, the Member State may, at its own initiative, submit to the Commission, within two months of the notification of the designations referred to in paragraph 1, the documents referred to in paragraph 3. The Commission shall make observations on those documents within three months of their receipt.

5. Where existing audit and control results show that the designated authority no longer fulfils the criteria referred to in

paragraph 2, the Member State shall, at an appropriate level, fix, according to the severity of the problem, a period of probation, during which the necessary remedial action shall be taken.

Where the designated authority fails to implement the required remedial action within the period of probation determined by the Member State, the Member State, at an appropriate level, shall end its designation.

The Member State shall notify the Commission without delay when a designated authority is put under probation, providing information on the respective period of probation, when, following implementation of remedial actions, the probation is ended, as well as when the designation of an authority is ended. The notification that a designated body is put on probation by the Member State, without prejudice to the application of Article 83, shall not interrupt the treatment of applications for interim payments.

6. Where the designation of a managing authority or a certifying authority is ended, Member States shall designate, in accordance with the procedure provided for in paragraph 2, a new body, to take over the functions of the managing authority or of the certifying authority, and shall notify the Commission thereof.

7. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts concerning the model for the report and opinion of the independent audit body and the description of the functions and procedures in place for the managing authority and, where appropriate, the certifying authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 125

##### Functions of the managing authority

1. The managing authority shall be responsible for managing the operational programme in accordance with the principle of sound financial management.

2. As regards the management of the operational programme, the managing authority shall:

(a) support the work of the monitoring committee referred to in Article 47 and provide it with the information it requires to carry out its tasks, in particular data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones;

(b) draw up and, after approval by the monitoring committee, submit to the Commission annual and final implementation reports referred to in Article 50;

<sup>(1)</sup> Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).



- (c) make available to intermediate bodies and beneficiaries information that is relevant to the execution of their tasks and the implementation of operations respectively;
- (d) establish a system to record and store in computerised form data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants in operations, where applicable;
- (e) ensure that the data referred to in point (d) is collected, entered and stored in the system referred to in point (d), and that data on indicators is broken down by gender where required by Annexes I and II of the ESF Regulation.
3. As regards the selection of operations, the managing authority shall:
- (a) draw up and, once approved, apply appropriate selection procedures and criteria that:
- (i) ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority;
- (ii) are non-discriminatory and transparent;
- (iii) take into account the general principles set out in Articles 7 and 8;
- (b) ensure that a selected operation falls within the scope of the Fund or Funds concerned and can be attributed to a category of intervention or, in the case of the EMFF, a measure identified in the priority or priorities of the operational programme;
- (c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution;
- (d) satisfy itself that the beneficiary has the administrative, financial and operational capacity to fulfil the conditions referred to in point (c) before approval of the operation;
- (e) satisfy itself that, where the operation has started before the submission of an application for funding to the managing authority, applicable law relevant for the operation has been complied with;
- (f) ensure that operations selected for support from the Funds or the EMFF do not include activities which were part of an operation which has been or should have been subject to a procedure of recovery in accordance with Article 71 following the relocation of a productive activity outside the programme area;
- (g) determine the categories of intervention or, in the case of the EMFF, the measures to which the expenditure of an operation shall be attributed.
4. As regards the financial management and control of the operational programme, the managing authority shall:
- (a) verify that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation;
- (b) ensure that beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;
- (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified;
- (d) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of point (g) of Article 72;
- (e) draw up the management declaration and annual summary referred to in points (a) and (b) of Article 59(5) of the Financial Regulation.
- By way of derogation from point (a) of the first subparagraph, the ETC Regulation may establish specific rules on verification applicable to cooperation programmes.
5. Verifications pursuant to point (a) of the first subparagraph of paragraph 4 shall include the following procedures:
- (a) administrative verifications in respect of each application for reimbursement by beneficiaries;
- (b) on-the-spot verifications of operations.
- The frequency and coverage of the on-the-spot verifications shall be proportionate to the amount of public support to an operation and to the level of risk identified by such verifications and audits by the audit authority for the management and control system as a whole.
6. On-the-spot verifications of individual operations pursuant to point (b) of the first subparagraph of paragraph 5 may be carried out on a sample basis.
7. Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in point (a) of the first subparagraph of paragraph 4 shall ensure adequate separation of functions.

8. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established under point (d) of paragraph 2 of this Article.

The Commission shall adopt implementing acts laying down the technical specifications of the system established under point (d) of paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

9. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the detailed minimum requirements for the audit trail referred to in point (d) of the first subparagraph of paragraph 4 of this Article in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries.

10. The Commission shall, in order to ensure uniform conditions on the implementation of this Article, adopt implementing acts concerning the model for the management declaration referred to in point (e) of the first subparagraph of paragraph 4 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

#### Article 126

##### Functions of the certifying authority

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

- (a) drawing up and submitting payment applications to the Commission, and certifying that they result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the managing authority;
- (b) drawing up the accounts referred to in point (a) of Article 59(5) of the Financial Regulation;
- (c) certifying the completeness, accuracy and veracity of the accounts and that the expenditure entered in the accounts complies with applicable law and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with applicable law;
- (d) ensuring that there is a system which records and stores, in computerised form, accounting records for each operation, and which supports all the data required for drawing up payment applications and accounts, including records of amounts recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for an operation or operational programme;
- (e) ensuring, for the purposes of drawing up and submitting payment applications, that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure;
- (f) taking account when drawing up and submitting payment applications of the results of all audits carried out by, or under the responsibility of, the audit authority;
- (g) maintaining, in a computerised form, accounting records of expenditure declared to the Commission and of the corresponding public contribution paid to beneficiaries;
- (h) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the budget of the Union prior to the closure of the operational programme by deducting them from the subsequent statement of expenditure.

#### Article 127

##### Functions of the audit authority

1. The audit authority shall ensure that audits are carried out on the proper functioning of the management and control system of the operational programme and on an appropriate sample of operations on the basis of the declared expenditure. The declared expenditure shall be audited based on a representative sample and, as a general rule, on statistical sampling methods.

A non- statistical sampling method may be used on the professional judgement of the audit authority, in duly justified cases, in accordance with internationally accepted audit standards and in any case where the number of operations for an accounting year is insufficient to allow the use of a statistical method.

In such cases, the size of the sample shall be sufficient to enable the audit authority to draw up a valid audit opinion in accordance with the second subparagraph of Article 59(5) of the Financial Regulation.

The non-statistical sample method shall cover a minimum of 5 % of operations for which expenditure has been declared to the Commission during an accounting year and 10 % of the expenditure which has been declared to the Commission during an accounting year.

2. Where audits are carried out by a body other than the audit authority, the audit authority shall ensure that any such body has the necessary functional independence.

3. The audit authority shall ensure that audit work takes account of internationally accepted audit standards.

4. The audit authority shall, within eight months of adoption of an operational programme, prepare an audit strategy for performance of audits. The audit strategy shall set out the audit methodology, the sampling method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2024. Where a common management and control system applies to more than one operational programme, a single audit strategy may be prepared for the operational programmes concerned. The audit authority shall submit the audit strategy to the Commission upon request.

5. The audit authority shall draw up:

- (a) an audit opinion in accordance with the second subparagraph of Article 59(5) of the Financial Regulation;
- (b) a control report setting out the main findings of the audits carried out in accordance with paragraph 1, including findings with regard to deficiencies found in the management and control systems, and the proposed and implemented corrective actions.

Where a common management and control system applies to more than one operational programme, the information required under point (b) of the first subparagraph may be grouped in a single report.

6. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down models for the audit strategy, the audit opinion and the control report. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

7. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in paragraph 1 of this Article.

8. The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives.

#### CHAPTER III

### Cooperation with audit authorities

#### Article 128

### Cooperation with audit authorities

1. The Commission shall cooperate with audit authorities to coordinate their audit plans and methods and shall immediately exchange with those authorities the results of audits carried out on management and control systems.

2. To facilitate this cooperation in cases where a Member State designates more than one audit authority, the Member State may designate a coordination body.

3. The Commission, the audit authorities and any coordination body shall meet on a regular basis and, as a general rule, at least once a year, unless otherwise agreed, to examine the annual control report, the audit opinion and the audit strategy, and to exchange views on issues relating to improvement of the management and control systems.

#### TITLE II

### FINANCIAL MANAGEMENT, PREPARATION, EXAMINATION, ACCEPTANCE AND CLOSURE OF ACCOUNTS AND FINANCIAL CORRECTIONS

#### CHAPTER I

### Financial management

#### Article 129

### Common rules for payments

The Member State shall ensure that by the closure of the operational programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds paid by the Commission to the Member State.

#### Article 130

### Common rules for calculating interim payments and payment of the final balance

1. The Commission shall reimburse as interim payments 90 % of the amount resulting from applying the co-financing rate for each priority, laid down in the decision adopting the operational programme, to the eligible expenditure for the priority included in the payment application. The Commission shall determine the remaining amounts to be reimbursed as interim payments or to be recovered in accordance with Article 139.

2. The contribution from the Funds or the EMFF to a priority through the interim payments and payment of the final balance shall not be higher than:

- (a) the eligible public expenditure indicated in the payment application for the priority; or
- (b) the contribution from the Funds or the EMFF for the priority laid down in the decision of the Commission approving the operational programme.

#### Article 131

### Payment applications

1. Payment applications shall include, for each priority:

- (a) the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations, as entered in the accounting system of the certifying authority;

(b) the total amount of public expenditure incurred in implementing operations, as entered in the accounting system of the certifying authority.

2. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c) and (d) of the first subparagraph of Article 67(1), under Article 68, Article 69(1) and Article 109 of this Regulation and under Article 14 of the ESF Regulation. For those forms of support, the amounts included in a payment application shall be the costs calculated on the applicable basis.

3. In the case of aid schemes under Article 107 TFEU, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid.

4. By way of derogation from paragraph 1, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid under the following cumulative conditions:

(a) those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State;

(b) those advances do not exceed 40 % of the total amount of the aid to be granted to a beneficiary for a given operation;

(c) those advances are covered by expenditure paid by beneficiaries in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within three years following the year of the payment of the advance or on 31 December 2023, whichever is earlier, failing which the next payment application shall be corrected accordingly.

5. Each payment application which includes advances of the type referred to in paragraph 4 shall separately disclose the total amount paid from the operational programme as advances, the amount which has been covered by expenditure paid by beneficiaries within three years of the payment of the advance in accordance with point (c) of paragraph 4, and the amount which has not been covered by expenditure paid by beneficiaries and for which the three year period has not yet elapsed.

6. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the model for payment applications. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### Article 132

##### Payment to beneficiaries

1. Subject to the availability of funding from initial and annual pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary.

No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

2. The payment deadline referred to in paragraph 1 may be interrupted by the managing authority in either of the following duly justified cases:

(a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of the first subparagraph of Article 125(4), have not been provided;

(b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the interruption and the reasons for it.

#### Article 133

##### Use of the euro

1. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro. Those amounts shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. The exchange rate shall be published electronically by the Commission each month.

2. By way of derogation from paragraph 1, the ETC Regulation may establish specific rules on the timing for conversion into euro.

3. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 1 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

*Article 134***Payment of pre-financing**

1. The initial pre-financing amount shall be paid in instalments as follows:

- (a) in 2014: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme or 1,5 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme when a Member State has been receiving financial assistance since 2010, in accordance with Articles 122 and 143 TFEU, or from the European Financial Stability Facility (EFSF), or is receiving financial assistance on 31 December 2013 in accordance with Articles 136 and 143 TFEU;
- (b) in 2015: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme or 1,5 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme when a Member State has been receiving financial assistance since 2010, in accordance with Articles 122 and 143 TFEU, or from the EFSF, or is receiving financial assistance on 31 December 2014 in accordance with Articles 136 and 143 TFEU;
- (c) in 2016: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme.

If an operational programme is adopted in 2015 or later, the earlier instalments shall be paid in the year of adoption.

2. An annual pre-financing amount shall be paid before 1 July in the years 2016 to 2023. It shall be a percentage of the amount of the support from the Funds and the EMFF for the whole programming period to the operational programme as follows:

- 2016: 2 %
- 2017: 2,625 %
- 2018: 2,75 %
- 2019: 2,875 %
- 2020 to 2023: 3 %.

3. When calculating the amount of initial pre-financing referred to in paragraph 1, the amount of support for the entire programming period shall exclude the amounts from the performance reserve which were initially allocated to the operational programme.

When calculating the amount of annual pre-financing referred to in paragraph 2 up to and including 2020, the amount of support for the entire programming period shall exclude the amounts from the performance reserve which were initially allocated to the operational programme.

*Article 135***Deadlines for presentation of interim payment applications and for their payment**

1. The certifying authority shall submit on a regular basis an application for interim payment in accordance with Article 131(1) covering amounts entered in its accounting system in the accounting year. However, the certifying authority, where it considers it to be necessary, may include such amounts in payment applications submitted in subsequent accounting years.

2. The certifying authority shall submit the final application for an interim payment by 31 July following the end of the previous accounting year and, in any event, before the first application for interim payment for the next accounting year.

3. The first application for interim payment shall not be made before the notification to the Commission of the designation of the managing authorities and certifying authorities in accordance with Article 124.

4. Interim payments shall not be made for an operational programme unless the annual implementation report has been sent to the Commission in accordance with the Fund-specific rules.

5. Subject to available funding, the Commission shall make the interim payment no later than 60 days after the date on which a payment application is registered with the Commission.

*Article 136***Decommitment**

1. The Commission shall decommit any part of the amount in an operational programme that has not been used for payment of the initial and annual pre-financing and interim payments by 31 December of the third financial year following the year of budget commitment under the operational programme or for which a payment application drawn up in accordance with Article 131 has not been submitted in accordance with Article 135.

2. That part of commitments still open on 31 December 2023 shall be decommitted if any of the documents required under Article 141(1) has not been submitted to the Commission by the deadline set out in Article 141(1).

## CHAPTER II

**Preparation, examination and acceptance of accounts and closure of operational programmes and suspension of payments**

## Section I

**Preparation, examination and acceptance of accounts***Article 137***Preparation of the accounts**

1. The accounts referred to in point (a) of Article 59(5) of the Financial Regulation shall be submitted to the Commission for each operational programme. The accounts shall cover the accounting year and shall include at the level of each priority and, where applicable, fund and category of regions:

- (a) the total amount of eligible expenditure entered into the accounting systems of the certifying authority which has been included in payment applications submitted to the Commission in accordance with Article 131 and Article 135(2) by 31 July following the end of the accounting year, the total amount of the corresponding public expenditure incurred in implementing operations, and the total amount of corresponding payments made to beneficiaries under Article 132(1);
- (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries effected pursuant to Article 71, and the irrecoverable amounts;
- (c) the amounts of programme contributions paid to financial instruments under Article 41(1) and advances of State aid under Article 131(4);
- (d) for each priority, a reconciliation between the expenditure stated pursuant to point (a) and the expenditure declared in respect of the same accounting year in payment applications, accompanied by an explanation of any differences.

2. Where expenditure previously included in an application for interim payment for the accounting year is excluded by a Member State from its accounts due to an ongoing assessment of that expenditure's legality and regularity, any or all of that expenditure subsequently found to be legal and regular may be included in an application for interim payment relating to subsequent accounting years.

3. The Commission shall, in order to lay down uniform conditions for the implementation of this Article, adopt implementing acts setting out the model for the accounts referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

*Article 138***Submission of information**

For each year from 2016 until and including 2025, Member States shall submit, by the deadline set out in Article 59(5) of the Financial Regulation, the documents referred to in that Article namely:

- (a) the accounts, referred to in Article 137(1) of this Regulation, for the preceding accounting year;
- (b) the management declaration and the annual summary referred to in point (e) of the first subparagraph of Article 125(4) of this Regulation, for the preceding accounting year;
- (c) the audit opinion and the control report referred to in points (a) and (b) of the first subparagraph of Article 127(5) of this Regulation, for the preceding accounting year.

*Article 139***Examination and acceptance of accounts**

1. The Commission shall carry out an examination of the documents submitted by the Member State under Article 138. Upon request by the Commission, the Member State shall provide all necessary additional information to enable the Commission to determine whether the accounts are complete, accurate and true, by the deadline set out in Article 84.

2. The Commission shall accept the accounts where it is able to conclude that the accounts are complete, accurate and true. The Commission shall reach such a conclusion where the audit authority has provided an unqualified audit opinion regarding the completeness, accuracy and veracity of the accounts unless the Commission has specific evidence that the audit opinion on the accounts is unreliable.

3. The Commission shall inform the Member State by the deadline set out in Article 84 as to whether it is able to accept the accounts.

4. If, for reasons attributable to Member State, the Commission is unable to accept the accounts by the deadline set out in Article 84, the Commission shall notify the Member States specifying the reasons in accordance with paragraph 2 of this Article and the actions which are required to be undertaken and the time period for their completion. At the end of the time period for the completion of those actions the Commission shall inform the Member State as to whether it is able to accept the accounts.

5. Issues related to legality and regularity of the underlying transactions concerning expenditure entered in the accounts shall not be taken into account for the purposes of acceptance of the accounts by the Commission. The procedure for examination and acceptance of the accounts shall not interrupt the treatment of applications for interim payments and shall not lead to suspension of payments, without prejudice to Articles 83 and 142.

6. On the basis of the accepted accounts, the Commission shall calculate the amount chargeable to the Funds and to the EMFF for the accounting year and the consequent adjustments in relation to the payments to the Member State. The Commission shall take into account:

- (a) the amounts in the accounts referred to in point (a) of Article 137(1) and to which the co-financing rate for each priority is to be applied;
- (b) the total amount of payments made by the Commission during that accounting year, consisting of:
  - (i) the amount of interim payments paid by the Commission in accordance with Article 130(1) and Article 24; and
  - (ii) the amount of the annual pre-financing paid under Article 134(2).

7. After the calculation carried out under paragraph 6, the Commission shall clear the respective annual pre-financing and pay any additional amount due within 30 days of the acceptance of the accounts. Where there is an amount recoverable from the Member State, it shall be subject to a recovery order issued by the Commission which shall be executed, where possible, by offsetting against amounts due to the Member State under subsequent payments to the same operational programme. Such recovery shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. The amount recovered shall constitute assigned revenue in accordance with Article 177(3) of the Financial Regulation.

8. Where, after applying the procedure set out in paragraph 4, the Commission is unable to accept the accounts, the Commission shall determine, on the basis of the available information and in accordance with paragraph 6, the amount chargeable to the Funds for the accounting year, and shall inform the Member State. Where the Member State notifies the Commission of its agreement within two months of the transmission by the Commission of the information, paragraph 7 shall apply. In the absence of such agreement, the Commission shall adopt a decision, by means of implementing acts, setting out the amount chargeable to the Funds for the accounting year. Such decision shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. On the basis of the decision, the Commission shall apply the adjustments to the payments to the Member State in accordance with paragraph 7.

9. The acceptance of the accounts by the Commission, or a decision by the Commission under paragraph 8 of this Article, shall be without prejudice to the application of corrections under Articles 144 and 145.

10. Member States may replace irregular amounts which are detected after the submission of the accounts by making the

corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 144 and 145.

#### Article 140

##### Availability of documents

1. Without prejudice to the rules governing State aid, the managing authority shall ensure that all supporting documents regarding expenditure supported by the Funds on operations for which the total eligible expenditure is less than EUR 1 000 000, are made available to the Commission and the European Court of Auditors upon request for a period of three years from 31 December following the submission of the accounts in which the expenditure of the operation is included.

In the case of operations other than those referred to in the first subparagraph, all supporting documents shall be made available for a two year period from 31 December following the submission of the accounts in which the final expenditure of the completed operation is included.

A managing authority may decide to apply to operations for which the total eligible expenditure is less than EUR 1 000 000 the rule referred to in the second subparagraph.

The time period referred to in the first subparagraph shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.

2. The managing authority shall inform beneficiaries of the start date of the period referred to in paragraph 1.

3. The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.

4. The documents shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

5. The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6. Where documents exist in electronic form only, the computer systems used shall meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

## Section II

**Closure of operational programmes***Article 141***Submission of closure documents and payment of the final balance**

1. In addition to the documents referred to in Article 138, for the final accounting year from 1 July 2023 to 30 June 2024, Member States shall submit a final implementation report for the operational programme or the last annual implementation report for the operational programme supported by the EMFF.

2. The final balance shall be paid no later than three months after the date of acceptance of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

## Section III

**Suspension of payments***Article 142***Suspension of payments**

1. All or part of the interim payments at the level of priorities or operational programmes may be suspended by the Commission if one or more of the following conditions are met:

- (a) there is a serious deficiency in the effective functioning of the management and control system of the operational programme, which has put at risk the Union contribution to the operational programme and for which corrective measures have not been taken;
- (b) expenditure in a statement of expenditure is linked to an irregularity having serious financial consequences which has not been corrected;
- (c) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 83;
- (d) there is a serious deficiency in the quality and reliability of the monitoring system or of the data on common and specific indicators;
- (e) there is a failure to complete actions to fulfil an ex ante conditionality subject to the conditions set out in Article 19;
- (f) there is evidence resulting from the performance review for a priority that there has been a serious failure in achieving that priority's milestones relating to financial and output indicators and key implementation steps set out in the performance framework subject to the conditions set out in Article 22.

The Fund-specific rules for the EMFF may lay down specific bases for suspension of payments linked to non-compliance with rules applicable under the Common Fisheries Policy, which shall be proportionate, having regard to the nature, gravity, duration and recurrence of the non-compliance.

2. The Commission may decide, by means of implementing acts, to suspend all or part of interim payments, after having given the Member State the opportunity to present its observations.

3. The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted.

## CHAPTER III

**Financial corrections**

## Section I

**Financial corrections by Member States***Article 143***Financial corrections by Member States**

1. The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2. Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts by the managing authority for the accounting year in which the cancellation is decided.

3. The contribution from the Funds or the EMFF cancelled in accordance with paragraph 2 may be reused by the Member State within the operational programme concerned, subject to paragraph 4.

4. The contribution cancelled in accordance with paragraph 2 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

5. The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Member States linked to non-compliance with rules applicable under the Common Fisheries Policy, which shall be proportionate, having regard to the nature, gravity, duration and recurrence of the non-compliance.



## Section II

**Financial corrections by the Commission***Article 144***Criteria for financial corrections**

1. The Commission shall make financial corrections, by means of implementing acts, by cancelling all or part of the Union contribution to an operational programme in accordance with Article 85, where, after carrying out the necessary examination, it concludes that:

- (a) there is a serious deficiency in the effective functioning of the management and control system of the operational programme which has put at risk the Union contribution already paid to the operational programme;
- (b) the Member State has not complied with its obligations under Article 143 prior to the opening of the correction procedure under this paragraph;
- (c) expenditure contained in a payment application is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph.

The Commission shall base its financial corrections on individual cases of identified irregularity and shall take account of whether an irregularity is systemic. Where it is not possible to quantify precisely the amount of irregular expenditure charged to the Funds or the EMFF, the Commission shall apply a flat rate or extrapolated financial correction.

2. The Commission shall, when deciding on a correction under paragraph 1, respect the principle of proportionality by taking account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the operational programme.

3. Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 143(2), the notifications sent under Article 122(2), and any replies from the Member State.

4. In accordance with Article 22(7), where the Commission, based on the examination of the final implementation report of the operational programme for the Funds or the last annual implementation report for the EMFF, establishes a serious failure to achieve the targets set out in the performance framework, it may apply financial corrections in respect of the priorities concerned, by means of implementing acts.

5. When a Member State does not comply with its obligations under Article 95, the Commission may, in relation to the degree of non-compliance with those obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 149, laying down detailed rules

concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

7. The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Commission linked to non-compliance with rules applicable under the Common Fisheries Policy which shall be proportionate having regard to the nature, gravity, duration and recurrence of the non-compliance.

*Article 145***Procedure**

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

2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3. The Commission shall take account of any evidence provided by the Member State within the time limits set out in paragraphs 1 and 2.

4. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

5. In the event of an agreement, and without prejudice to paragraph 6 of this Article, the Member State may reuse the Funds concerned in accordance with Article 143(3).

6. In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

7. Where the Commission in carrying out its responsibilities under Article 75, or the European Court of Auditors, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Funds to the operational programme.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

- (a) had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial Regulation, or in other audit reports of the audit authority submitted to the Commission and appropriate measures taken; or
- (b) had been the subject of appropriate remedial measures by the Member State.

The assessment of serious deficiencies in the effective functioning of management and control systems shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

- (a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;
- (b) for the purpose of applying a flat rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been the subject of an adjustment in the accounts in accordance with Article 139(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 137(2);
- (c) take into account flat rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the budget of the Union.

8. The Fund-specific rules for the EMFF may lay down additional rules of procedure for financial corrections referred to in Article 144(7).

#### Article 146

##### Obligations of Member States

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under

Article 143(2) of this Regulation and to recover State aid within the meaning of Article 107(1) TFEU and under Article 14 of Council Regulation (EC) No 659/1999 <sup>(1)</sup>.

#### Article 147

##### Repayment

1. Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 73 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.

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

#### TITLE III

##### PROPORTIONAL CONTROL OF OPERATIONAL PROGRAMMES

#### Article 148

##### Proportional control of operational programmes

1. Operations for which the total eligible expenditure does not exceed EUR 200 000 for the ERDF and the Cohesion Fund, EUR 150 000 for the ESF or EUR 100 000 for the EMFF shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Other operations shall not be subject to more than one audit per accounting year by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors, provided that the results of the audit work performed by the European Court of Auditors for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.

2. For operational programmes for which the most recent audit opinion indicates that there are no significant deficiencies, the Commission may agree with the audit authority in the subsequent meeting referred to in Article 128(3) that the level of audit work required may be reduced so that it is proportionate to the risk established. In such cases, the Commission shall not carry out its own on-the-spot audits unless there is evidence suggesting deficiencies in the management and control system affecting expenditure declared to the Commission in an accounting year for which the accounts have been accepted by the Commission.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

3. For operational programmes for which the Commission concludes that the opinion of the audit authority is reliable, it may agree with the audit authority to limit the Commission's own on-the-spot audits to audit the work of the audit authority unless there is evidence of deficiencies in the work of the audit authority for an accounting year for which the accounts have been accepted by the Commission.

4. Notwithstanding paragraph 1, the audit authority and the Commission may carry out audits of operations in the event that a risk assessment or an audit by the European Court of Auditors establishes a specific risk of irregularity or fraud, in the case of evidence of serious deficiencies in the effective functioning of the management and control system of the operational programme concerned, and, during the period referred to in Article 140(1). The Commission may, for the purpose of assessing the work of an audit authority, review the audit trail of the audit authority or take part in the on-the-spot audits of the audit authority and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the audit authority, the Commission may carry out audits of operations.

## PART FIVE

### DELEGATIONS OF POWER, IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS

#### CHAPTER I

#### *Delegations of power and implementing provisions*

##### *Article 149*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) shall be conferred on the Commission from 21 December 2013 until 31 December 2020.

3. The delegation of power referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) may

be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

##### *Article 150*

#### **Committee Procedure**

1. In the application of this Regulation, the ERDF Regulation, the ETC Regulation, the ESF Regulation and the CF Regulation, the Commission shall be assisted by a Coordination Committee for the European Structural and Investment Funds. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act in respect of the implementing powers referred to in the third paragraph of Article 8, the fifth subparagraph of Article 22(7), the second subparagraph of Article 38(3), Article 38(10), the second subparagraph of Article 39(4), Article 46(3), the second subparagraph of Article 96(2), Article 115(4) and the second subparagraph of Article 125(8), and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

## CHAPTER II

**Transitional and final provisions**

## Article 151

**Review**

The European Parliament and the Council shall review this Regulation by 31 December 2020 in accordance with Article 177 TFEU.

## Article 152

**Transitional provisions**

1. This Regulation shall not affect either the continuation or modification, including the total or partial cancellation of assistance approved by the Commission on the basis of Regulation (EC) No 1083/2006 or any other legislation applying to that assistance on 31 December 2013. That Regulation or such other applicable legislation shall consequently continue to apply after 31 December 2013 to that assistance or the operations concerned until their closure. For the purposes of this paragraph assistance shall cover operational programmes and major projects.

2. Applications to receive assistance made or approved under Regulation (EC) No 1083/2006 shall remain valid.

3. Where a Member State makes use of the option set out in Article 123(3), it may submit a request to the Commission for the managing authority by way of derogation from point (b) of Article 59(1) of Regulation (EC) No 1083/2006 for the corresponding operational programmes implemented on the basis of Regulation (EC) No 1083/2006. The request shall be accompanied by an assessment made by the audit authority.

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

Done at Brussels, 17 December 2013.

For the European Parliament  
The President  
M. SCHULZ

For the Council  
The President  
R. ŠADŽIUS

Where the Commission is satisfied on the basis of information made available from the audit authority and from its own audits that the management and control systems of those operational programmes function effectively and that their functioning will not be prejudiced by the managing authority carrying out the functions of the certifying authority, it shall inform the Member State of its agreement within two months of the date of receipt of the request.

## Article 153

**Repeal**

1. Without prejudice to the provisions laid down in Article 152, Regulation (EC) No 1083/2006 is hereby repealed with effect from 1 January 2014.

2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex XIV.

## Article 154

**Entry into force**

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

Articles 20 to 24, Article 29(3), point (a) of Article 38(1), Articles 58, 60, 76 to 92, 118, 120, 121 and Articles 129 to 147 shall apply with effect from 1 January 2014.

The second sentence of the seventh subparagraph of Article 39(2) and the fifth paragraph of Article 76 shall apply with effect from the date on which the amendment to the Financial Regulation relating to the decommitment of appropriations has entered into force.

## ANNEX I

**COMMON STRATEGIC FRAMEWORK****1. INTRODUCTION**

In order to promote the harmonious, balanced and sustainable development of the Union and to maximise the contribution of the ESI Funds to the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions of the ESI Funds, including economic, social and territorial cohesion, it is necessary to ensure that policy commitments made in the context of the Union strategy for smart, sustainable and inclusive growth are underpinned by investment through the ESI Funds and other Union instruments. The Common Strategic Framework (CSF) shall therefore, in accordance with Article 10, and in compliance with the priorities and objectives laid down in the Fund-specific Regulations, provide strategic guiding principles in order to achieve an integrated development approach using the ESI Funds coordinated with other Union instruments and policies, in line with the policy objectives and headline targets of the Union strategy for smart, sustainable and inclusive growth and, where appropriate, the flagship initiatives, while taking into account the key territorial challenges and specific national, regional and local contexts.

**2. CONTRIBUTION OF ESI FUNDS TO THE UNION STRATEGY FOR SMART, SUSTAINABLE AND INCLUSIVE GROWTH AND COHERENCE WITH THE UNION'S ECONOMIC GOVERNANCE**

1. To support effective targeting of smart, sustainable and inclusive growth in the Partnership Agreements and programmes this Regulation identifies eleven thematic objectives, set out in the first paragraph of Article 9, corresponding to the priorities of the Union strategy for smart, sustainable and inclusive growth which shall receive support from the ESI Funds.
2. In line with the thematic objectives set out in the first paragraph of Article 9, Member States shall, in order to ensure critical mass necessary to deliver growth and jobs, concentrate support in accordance with Article 18 of this Regulation and with the Fund-specific rules on thematic concentration, and shall ensure the effectiveness of spending. Member States shall give particular attention to prioritising growth-friendly expenditure, including spending on education, research, innovation and energy efficiency and expenditure to facilitate the access of SMEs to finance, and to ensure environmental sustainability, and the management of natural resources and climate action as well as to modernise public administration. They shall also take account of maintaining or reinforcing the coverage and effectiveness of employment services and active labour market policies in order to combat unemployment, with a focus on youth and tackle the social consequences of the crisis, and promote social inclusion.
3. To ensure consistency with priorities established in the context of the European Semester, in preparing their Partnership Agreements, Member States shall plan the use of the ESI Funds taking into account the National Reform Programmes, where appropriate, and the most recent relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU in accordance with their respective roles and obligations. Member States, where necessary, shall also take into account relevant Council recommendations based on the Stability and Growth Pact and the economic adjustment programmes.
4. In order to determine the way in which the ESI Funds can most effectively contribute to the Union strategy for smart, sustainable and inclusive growth, and to take account of the Treaty objectives, including economic, social and territorial cohesion, Member States shall select the thematic objectives for the planned use of the ESI Funds within the appropriate national, regional and local contexts.

**3. INTEGRATED APPROACH TO AND ARRANGEMENTS FOR THE USE OF THE ESI FUNDS****3.1 Introduction**

1. In accordance with point (a) of Article 15(2) the Partnership Agreement shall indicate an integrated approach to territorial development. Member States shall ensure that the selection of thematic objectives and investment and Union priorities addresses development needs and territorial challenges in an integrated manner in line with the analysis set out in section 6.4. Member States shall seek to make maximum use of the possibilities for ensuring coordinated and integrated delivery of the ESI funds.
2. Member States and, where appropriate in accordance with Article 4(4), regions shall ensure that the interventions supported through the ESI Funds are complementary and are implemented in a coordinated manner with a view to creating synergies, in order to reduce the administrative cost and burden for managing bodies and beneficiaries in accordance with Articles 4, 15 and 27.

### 3.2 Coordination and complementarity

1. Member States and managing authorities responsible for the implementation of the ESI Funds shall work closely together in the preparation, implementation, monitoring and evaluation of the Partnership Agreement and programmes. In particular, they shall ensure that the following actions are carried out:
  - (a) identify areas of intervention where the ESI Funds can be combined in a complementary manner to achieve the thematic objectives set out in this Regulation;
  - (b) ensure in accordance with Article 4(6), the existence of arrangements for the effective coordination of the ESI Funds in order to increase the impact and effectiveness of the Funds including, where appropriate, through the use of multi-fund programmes for the Funds;
  - (c) promote the involvement of managing authorities responsible for other ESI Funds and relevant ministries in the development of support schemes to ensure coordination and synergies and to avoid overlaps;
  - (d) establish, where appropriate, joint monitoring committees for programmes implementing the ESI Funds, and the development of other joint management and control arrangements to facilitate coordination between authorities responsible for the implementation of the ESI Funds;
  - (e) make use of available joint eGovernance solutions, which may assist applicants and beneficiaries, and make the widest possible use of "one-stop shops", including for advice on the opportunities of support available through each of the ESI Funds;
  - (f) establish mechanisms to coordinate cooperation activities financed by the ERDF and the ESF with investments supported by the programmes under the Investment for growth and jobs goal;
  - (g) promote common approaches between ESI Funds with regard to guidance for the development of operations, calls for proposals and selection processes or other mechanisms to facilitate access to Funds for integrated projects;
  - (h) encourage cooperation between managing authorities of different ESI Funds in the areas of monitoring, evaluation, management and control, and audit.

### 3.3 Encouraging integrated approaches

1. Member States shall, where appropriate, combine the ESI Funds into integrated packages at local, regional or national level, which are tailor-made to address specific territorial challenges in order to support the achievement of the objectives set out in the Partnership Agreement and programmes. This can be done using ITIs, Integrated operations, Joint Action Plans and community-led local development.
2. In accordance with Article 36 to achieve integrated use of thematic objectives, funding from different priority axes or operational programmes supported by the ESF, ERDF and Cohesion Fund may be combined under an ITI. Actions carried out under an ITI may be complemented with financial support from the programmes under the EAFRD or the EMFF respectively.
3. In accordance with the relevant provisions of the Fund-specific rules, to increase impact and effectiveness in a thematically coherent integrated approach a priority axis may concern more than one category of region, combine one or more complementary investment priorities from the ERDF, Cohesion Fund and ESF under one thematic objective and, in duly justified cases combine one or more complementary investment priorities from different thematic objectives in order to achieve the maximum contribution to that priority axis.
4. Member States shall promote, in accordance with their institutional and legal framework and with Article 32 the development of local and sub-regional approaches. Community-led local development shall be implemented in the context of a strategic approach to ensure that the 'bottom-up' definition of local needs takes account of priorities set at a higher level. Member States shall therefore define the approach to community-led local development in the EAFRD and, where appropriate, in the ERDF, the ESF or the EMFF in accordance with Article 15(2) and shall indicate in the Partnership Agreement the main challenges to be tackled in this way, the main objectives and priorities for community-led local development, the types of territories to be covered, the specific role to be attributed to local action groups in the delivery of strategies and the role envisaged for the EAFRD and where appropriate for the ERDF, the ESF or the EMFF in implementing community-led local development strategies in different types of territories such as rural, urban and coastal areas and the corresponding co-ordination mechanisms.

#### 4. COORDINATION AND SYNERGIES BETWEEN ESI FUNDS AND OTHER UNION POLICIES AND INSTRUMENTS

Coordination by Member States as envisaged under this section shall apply in so far as a Member State intends to make use of support from the ESI Funds and other Union instruments in the relevant policy area. The Union programmes set out in this section do not constitute an exhaustive list.

##### 4.1 Introduction

1. Member States and the Commission shall, in accordance with their respective responsibilities, take into consideration the impact of Union policies at national and regional level, and on social, economic and territorial cohesion with a view to fostering synergies and effective coordination and to identifying and promoting the most suitable means of using Union funds to support local, regional and national investment. Member States shall also ensure complementarity between Union policies and instruments and national, regional and local interventions.

2. Member States and the Commission shall, in accordance with Article 4(6) and with their respective responsibilities, ensure coordination between the ESI Funds and other relevant Union instruments at Union and Member State level. They shall take appropriate steps to ensure consistency, at programming and implementation stages, between interventions supported by the ESI Funds and the objectives of other Union policies. To this end, they shall seek to take into account the following aspects:

(a) enhancing complementarities and synergies between different Union instruments at Union, national and regional level, both in the planning phase and during implementation;

(b) optimise existing structures and where necessary, establish new structures that facilitate the strategic identification of priorities for the different instruments and structures for coordination at Union and national level that avoid duplication of effort and identify areas where additional financial support is needed;

(c) make use of the potential to combine support from different instruments to support individual operations and work closely with those responsible for implementation at Union and national level to deliver coherent and streamlined funding opportunities for beneficiaries.

##### 4.2 Coordination with the Common Agricultural Policy and the Common Fisheries Policy

1. The EAFRD is an integral part of the Common Agricultural Policy and complements the measures under the European Agricultural Guarantee Fund which provide direct support to farmers and support market measures. Member States shall therefore manage those interventions together so as to maximise synergies and the added value of Union support.

2. The EMFF aims to achieve the objectives of the reformed Common Fisheries Policy and of the Integrated Maritime Policy. Member States shall therefore make use of the EMFF to support efforts to improve data collection and strengthen control, and ensure that synergies are also sought in support of the priorities of Integrated Maritime Policy, such as marine knowledge, maritime spatial planning, integrated coastal zone management, integrated maritime surveillance, the protection of the marine environment and of biodiversity, and the adaptation to the adverse effects of climate change on coastal areas.

##### 4.3 Horizon 2020 and other centrally managed Union programmes in the areas of research and innovation

1. Member States and the Commission shall have due regard to strengthening coordination, synergies and complementarities between the ESI Funds and Horizon 2020, the Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) in accordance with Regulation (EU) No 1287/2013 of the European Parliament and of the Council<sup>(1)</sup>, and other relevant centrally managed Union funding programmes while also establishing a clear division of areas of intervention between them.

2. Member States shall develop national and/or regional 'smart specialisation' strategies in line with the National Reform Programme, where appropriate. Such strategies may take the form of or be included in a national or a regional research and innovation strategic policy framework for 'smart specialisation'. Smart specialisation strategies shall be developed through involving national or regional managing authorities and stakeholders such as universities and other higher education institutions, industry and social partners in an entrepreneurial discovery process. The authorities directly concerned by Horizon 2020 shall be closely associated with that process. Smart specialisation strategies shall include:

<sup>(1)</sup> Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC (See page 33 of this Official Journal).

- (a) "Upstream actions" to prepare regional R&I players to participate in Horizon 2020 ("stairways to excellence") to be developed, where necessary, through capacity- building. Communication and cooperation between Horizon 2020 national contact points and managing authorities of the ESI Funds shall be strengthened.
- (b) "Downstream actions" to provide the means to exploit and diffuse R&I results, stemming from Horizon 2020 and preceding programmes, into the market with particular emphasis on creating an innovation-friendly environment for business and industry, including SMEs and in line with the priorities identified for the territories in the relevant smart specialisation strategy.
3. Member States shall encourage the use of the provisions in this Regulation that allow the ESI Funds to be combined with resources under Horizon 2020 in the relevant programmes used to implement parts of the strategies referred to in point 2. Joint support shall be provided to national and regional authorities for the design and implementation of such strategies, to identify opportunities for joint financing of R&I infrastructures of European interest, the promotion of international collaboration, methodological support through peer reviews, exchange of good practice, and training throughout regions.
4. Member States and, where appropriate under Article 4(4), regions, shall consider additional measures aimed at unlocking their potential for excellence in R&I, in a manner that is complementary to and creates synergies with Horizon 2020, in particular through joint funding. Those measures shall consist of:
- (a) linking excellent research institutions and less developed regions as well as low- performing Research, Development and Innovation (RDI) Member States and regions to create new or upgrade existing centres of excellence in less developed regions as well as in low-performing RDI Member States and regions;
- (b) building links in less developed regions as well as in low-performing RDI Member States and regions between innovative clusters of recognised excellence;
- (c) establishing "ERA Chairs" to attract outstanding academics, in particular to less developed regions and low-performing RDI Member States and regions;
- (d) supporting access to international networks for researchers and innovators who lack sufficient involvement in the European Research Area (ERA) or are from less developed regions or low-performing RDI Member States and regions;
- (e) contributing as appropriate to the European Innovation Partnerships;
- (f) preparing national institutions and/or clusters of excellence for participation in the Knowledge and Innovation Communities (KICs) of the European Institute of Innovation and Technology (EIT); and
- (g) hosting high-quality international researcher mobility programmes with co-funding from the "Marie Skłodowska-Curie Actions".

Member States shall endeavour to use where appropriate, and in accordance with Article 70, the flexibility to support operations outside the programme area, with a level of investment sufficient to attain a critical mass, in order to implement the measures referred to in the first subparagraph as effectively as possible.

#### 4.4 New Entrants Reserve (NER) 300 demonstration funding <sup>(1)</sup>

Member States shall ensure that financing from the ESI Funds is coordinated with support from the NER 300 Programme, which uses the revenues from auctioning 300 million allowances reserved under the new entrants reserve of the European Emissions Trading Scheme.

<sup>(1)</sup> Commission Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies under the scheme for greenhouse gas emission allowance trading within the Community established by Directive 2003/87/EC of the European Parliament and of the Council (OJ L 290, 6.11.2010, p. 39).



#### 4.5 Programme for the Environment and Climate Action (LIFE) <sup>(1)</sup> and the environmental acquis

1. Member States and the Commission shall, through a stronger thematic focus in programmes and the application of the principle of sustainable development in accordance with Article 8, seek to exploit synergies with Union policy instruments (both funding and non-funding instruments) serving climate change mitigation and adaptation, environmental protection and resource efficiency.
2. Member States shall promote and, where appropriate and in accordance with Article 4, ensure complementarity and coordination with LIFE, in particular with integrated projects in the areas of nature, biodiversity, water, waste, air, climate change mitigation and adaptation. Such coordination shall be achieved through measures such as promoting the funding of activities through the ESI Funds that complement integrated projects under LIFE as well as by promoting the use of solutions, methods and approaches validated under LIFE, inter alia, including investments in green infrastructure, energy efficiency, eco-innovation, ecosystem-based solutions, and the adoption of related innovative technologies.
3. The relevant sectoral plans, programmes or strategies (including the Prioritised Action Framework, the River Basin Management Plan, the Waste Management Plan, the mitigation plan or adaptation strategy) may serve as the coordination framework, where support is envisaged for the areas concerned.

#### 4.6 ERASMUS + <sup>(2)</sup>

1. Member States shall seek to use ESI Funds to mainstream tools and methods developed and tested successfully under "Erasmus +" in order to maximise the social and economic impact of investment in people and, inter alia give impetus to youth initiatives and citizens actions.
2. Member States shall promote and ensure in accordance with Article 4, effective coordination between ESI Funds and 'Erasmus +' at national level through a clear distinction in the types of investment and target groups supported. Member States shall seek complementarity with regard to the funding of mobility actions.
3. Coordination shall be achieved by putting in place appropriate cooperation mechanisms between managing authorities and the national agencies established under the 'Erasmus +' programme, which can foster transparent and accessible communication towards citizens at Union, national and regional level.

#### 4.7 European Union Programme for Employment and Social Innovation (EaSI) <sup>(3)</sup>

1. Member States shall promote and ensure in accordance with Article 4(6) effective coordination between the European Union Programme for Employment and Social Innovation (EaSI) and the support provided by the ESI Funds under the employment and social inclusion thematic objectives. That effective coordination includes coordination of support provided under the EURES axis of the EaSI with actions to enhance transnational labour mobility supported by the ESF in order to promote workers' geographical mobility and boost employment opportunities, as well as coordination between the ESI Funds' support for self-employment, entrepreneurship, business creation and social enterprises and the EaSI support under the microfinance and social entrepreneurship axis.
2. Member States shall seek to scale-up the most successful measures developed under the Progress axis of the EaSI, notably on social innovation and social policy experimentation with the support of the ESF.

#### 4.8 Connecting Europe Facility (CEF) <sup>(4)</sup>

1. To maximise European added value in the fields of transport, telecommunication and energy, Member States and the Commission shall ensure that ERDF and Cohesion Fund interventions are planned in close cooperation with the support provided from the CEF, so as to ensure complementarity, avoid duplication of efforts and ensure the optimal linkage of different types of infrastructure at local, regional and national levels, and across the Union.

<sup>(1)</sup> Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 (See page 185 of this Official Journal).

<sup>(2)</sup> Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing "Erasmus+": the Union programme for education, training, youth and sport and repealing Decisions Nos 1719/2006/EC, 1720/2006/EC and 1298/2008/EC (See page 50 of this Official Journal).

<sup>(3)</sup> Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (See page 238 of this Official Journal).

<sup>(4)</sup> Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013, establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

Maximum leverage of the different funding instruments shall be ensured for projects with a Union and Internal Market dimension, which deliver the highest European added-value, and promote social economic and territorial cohesion, in particular those projects implementing the priority transport, energy and digital infrastructure networks as identified in the respective trans-European network policy frameworks, in order to build new infrastructure and substantially upgrade existing infrastructure.

2. In the field of transport, investment planning shall be based on real and projected transport demand and identify missing links and bottlenecks, taking into account, in a coherent approach, the development of Union cross border links, and developing links across regions within a Member State. Investments in regional connectivity to the comprehensive trans-European transport network (TEN-T) and to the core TEN-T network shall ensure that urban and rural areas benefit from the opportunities created by major networks.
  3. Prioritisation of investments which have an impact beyond a certain Member State, particularly those which are part of the core TEN-T network corridors, shall be coordinated with TEN-T planning and core network corridors implementation plans, so that investments by the ERDF and the Cohesion Fund in transport infrastructure are fully in line with the TEN-T Guidelines.
  4. Member States shall focus on sustainable forms of transport and sustainable urban mobility and on investing in areas that offer the greatest European added value, taking into account the need to improve the quality, accessibility and reliability of transport services to promote public transport. Once identified, investments shall be prioritised according to their contribution to mobility, sustainability, to reducing greenhouse gas emissions, and to the Single European Transport Area, in accordance with the vision set out in the White Paper entitled "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system", highlighting that a significant reduction in greenhouse gases is required in the transport sector. The contribution of projects to sustainable European freight transport networks through the development of inland waterways should be promoted on the basis of a prior assessment of their environmental impact.
  5. The ESI Funds shall deliver the local and regional infrastructures and their linkages to the priority Union networks in the energy and telecommunication areas.
  6. Member States and the Commission shall put in place appropriate coordination and technical support mechanisms to ensure the complementarity and effective planning of ICT measures to make full use of the different Union instruments (ESI Funds, CEF, Trans-European networks, Horizon 2020) for the financing of broadband networks and the digital service infrastructures. The selection of the most appropriate financing instrument shall take into account the revenue generating potential of the operation and its level of risk in order to make the most effective use of public funds. In the context of their evaluation of applications for support from the ESI Funds, Member States should have regard to the evaluations of operations relating to those that have been submitted for CEF but not selected, without prejudice to the final selection decision by the managing authority.
- 4.9 Instrument for Pre-accession Assistance, European Neighbourhood Instrument and European Development Fund
1. Member States and the Commission shall, in accordance with their respective responsibilities, seek to increase coordination between external instruments and the ESI Funds to improve effectiveness in achieving multiple Union policy objectives. Coordination and complementarities with the European Development Fund, the Pre Accession Instrument and the European Neighbourhood Instrument is particularly important.
  2. To support deeper territorial integration, Member States shall seek to capitalise on synergies between territorial cooperation activities under cohesion policy and the European Neighbourhood Instruments, in particular with regard to cross border cooperation activities, taking account of the potential offered by EGTCs.
5. HORIZONTAL PRINCIPLES REFERRED TO IN ARTICLES 5, 7 AND 8 AND CROSS-CUTTING POLICY OBJECTIVES
- 5.1 Partnership and multi-level governance
1. In accordance with Article 5, the principle of partnership and multi-level governance shall be respected by Member States in order to facilitate achieving social, economic and territorial cohesion and delivery of the Union's priorities of smart, sustainable and inclusive growth. In order to respect those principles coordinated action is required, in particular between the different levels of governance, carried out in accordance with the principles of subsidiarity and proportionality, including by means of operational and institutional cooperation, with regard to the preparation and implementation of the Partnership Agreement and programmes.

- 2 Member States shall examine the need for strengthening the institutional capacity of partners in order to develop their potential in contributing to the effectiveness of the partnership.

## 5.2 Sustainable development

1. Member States and managing authorities shall, in all phases of implementation, ensure the full mainstreaming of sustainable development into the ESI Funds, respecting the principle of sustainable development as laid down in Article 3(3) TEU, as well as complying with the obligation to integrate environmental protection requirements pursuant to Article 11 TFEU and the polluter pays principle as set out in Article 191(2) TFEU.

Managing authorities shall undertake actions throughout the programme lifecycle, to avoid or reduce environmentally harmful effects of interventions and ensure results in net social, environmental and climate benefits. Actions to be undertaken may include the following:

- (a) directing investments towards the most resource-efficient and sustainable options;
  - (b) avoiding investments that may have a significant negative environmental or climate impact, and supporting actions to mitigate any remaining impacts;
  - (c) taking a long-term perspective when 'life-cycle' costs of alternative options for investment are compared;
  - (d) increasing the use of green public procurement.
2. Member States shall take into consideration the climate change mitigation and adaptation potential of investments made with the support of the ESI Funds, in accordance with Article 8, and ensure that they are resilient to the impact of climate change and natural disasters such as increased risks of flooding, droughts, heat waves, forest fires and extreme weather events.
  3. Investments shall be consistent with the water management hierarchy, in line with Directive 2000/60/EC of the European Parliament and of the Council <sup>(1)</sup>, with a focus on demand management options. Alternative supply options shall only be considered when the potential for water savings and efficiency has been exhausted. Public intervention in the waste management sector shall complement efforts by the private sector, in particular in relation to producer responsibility. Investments shall encourage innovative approaches that promote high levels of recycling. Investments shall be consistent with the waste hierarchy established under Directive 2008/98/EC of the European Parliament and of the Council <sup>(2)</sup>. Expenditure related to biodiversity and the protection of natural resources shall be consistent with Council Directive 92/43/EEC <sup>(3)</sup>.

## 5.3 Promotion of equality between men and women and non-discrimination

1. In accordance with Article 7, Member States and the Commission shall pursue the objective of equality between men and women and shall take appropriate steps to prevent any discrimination during the preparation, implementation, monitoring and evaluation of operations in the programmes co-financed by the ESI Funds. When pursuing the objectives of Article 7, Member States shall describe actions to be taken, in particular with regard to selection of operations, setting of objectives for interventions, and arrangements for monitoring and reporting. Member States shall also carry out gender analyses where appropriate. In particular, specific targeted actions shall be supported through the ESF.
2. Member States shall ensure, in accordance with Articles 5 and 7, the participation of the relevant bodies responsible for promoting gender equality and non-discrimination in the partnership, and ensure adequate structures in accordance with national practices to advise on gender equality, non-discrimination and accessibility in order to provide the necessary expertise in the preparation, monitoring and evaluation of the ESI Funds.
3. Managing authorities shall undertake evaluations or self-assessment exercises, in coordination with the monitoring committees, focusing on the application of the gender mainstreaming principle.

<sup>(1)</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

<sup>(2)</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>(3)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

4. Member States shall address, in an appropriate manner, the needs of disadvantaged groups in order to allow them to better integrate into the labour market, and thereby facilitate their full participation in society.

#### 5.4 Accessibility

1. Member States and the Commission shall, in accordance with Article 7, take appropriate steps to prevent any discrimination based on disability. Managing authorities shall ensure by means of action throughout programme lifecycles that all products, goods, services and infrastructures that are open or provided to the public and are co-financed by the ESI Funds are accessible to all citizens including those with disabilities in accordance with applicable law, thereby contributing to a barrier-free environment for persons with disabilities and the elderly. In particular, accessibility to the physical environment, transport, ICT in order to promote inclusion of disadvantaged groups, including persons with disabilities, shall be ensured. Actions to be undertaken may include directing investments towards accessibility in existing buildings and established services.

#### 5.5 Addressing demographic change

1. The challenges resulting from demographic change, including in particular those related to a shrinking working population, an increasing proportion of retired people in the overall population and to depopulation, shall be taken into account at all levels. Member States shall make use of the ESI Funds, in line with relevant national or regional strategies, where such strategies are in place, to tackle demographic problems and to create growth linked to an ageing society.
2. Member States shall use the ESI Funds, in line with relevant national or regional strategies to facilitate inclusion of all age groups, including through improved access to education and social support structures with a view to enhancing job opportunities for the elderly and young people and with a focus on regions with high rates of youth unemployment in comparison to the Union average rate. Investments in health infrastructures shall be aimed at ensuring a long and healthy working life for all of the Union's citizens.
3. To address challenges in the regions most affected by demographic change, Member States shall in particular identify measures to:
  - (a) support demographic renewal through better conditions for families and an improved balance between working and family life;
  - (b) boost employment, raise productivity and economic performance through investing in education, ICT and research and innovation;
  - (c) focus on the adequacy and quality of education, training and social support structures as well as where appropriate, on the efficiency of social protection systems;
  - (d) promote cost-effective provision of health care and long-term care including investment in e-health, e-care and infrastructure.

#### 5.6 Climate change mitigation and adaptation

In accordance with Article 8, climate change mitigation and adaptation, and risk prevention shall be integrated in the preparation and implementation of Partnership Agreements and programmes.

### 6. ARRANGEMENTS FOR ADDRESSING KEY TERRITORIAL CHALLENGES

- 6.1 Member States shall take account of geographic or demographic features and take steps to address the specific territorial challenges of each region to unlock their specific development potential, thereby also helping them to achieve smart, sustainable and inclusive growth in the most efficient way.
- 6.2 The choice and combination of thematic objectives, as well as the selection of corresponding investment and Union priorities and the specific objectives set shall reflect the needs and potential for smart, sustainable and inclusive growth of each Member State and region.

- 6.3 When preparing Partnership Agreements and programmes Member States shall therefore take into consideration that the major societal challenges faced by the Union today – globalisation, demographic change, environmental degradation, migration, climate change, energy use, the economic and social consequences of the crisis – may have different impacts in different regions.
- 6.4 With a view to an integrated territorial approach to addressing territorial challenges Member States shall ensure that programmes under the ESI Funds reflect the diversity of European regions, in terms of employment and labour market characteristics, interdependencies between different sectors, commuting patterns, population ageing and demographic shifts, cultural, landscape and heritage features, climate change vulnerabilities and impacts, land use and resource constraints, potential for more sustainable use of natural resources including renewables, institutional and governance arrangements, connectivity and accessibility, and linkages between rural and urban areas. In accordance with point (a) of Article 15(1), Member States and regions shall therefore undertake the following steps for the purpose of preparation of their Partnership Agreements and programmes:
- (a) An analysis of the Member State's or region's characteristics, development potential and capacity, particularly in relation to the key challenges identified in the Union strategy for smart, sustainable and inclusive growth, the National Reform Programmes, where appropriate, relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and in relevant Council recommendations adopted in accordance with Article 148(4) TFEU;
  - (b) An assessment of the major challenges to be addressed by the region or Member State, the identification of the bottlenecks and missing links, innovation gaps, including the lack of planning and implementation capacity that inhibit the long-term potential for growth and jobs. This shall form the basis for the identification of the possible fields and activities for policy prioritisation, intervention and concentration;
  - (c) An assessment of the cross-sectoral, cross-jurisdictional or cross-border coordination challenges, particularly in the context of macro-regional and sea-basin strategies;
  - (d) Identification of steps to achieve improved coordination across different territorial levels, taking account of the appropriate territorial scale and context for policy design as well as Member States' institutional and legal framework, and sources of funding to deliver an integrated approach linking the Union strategy for smart, sustainable and inclusive growth with regional and local actors.
- 6.5 In order to take into account the objective of territorial cohesion, the Member States and regions shall, in particular, ensure that the overall approach to promoting smart, sustainable and inclusive growth in the areas concerned:
- (a) reflects the role of cities, urban and rural areas, fisheries and coastal areas, and areas facing specific geographical or demographic handicaps;
  - (b) takes account of the specific challenges of the outermost regions, the northernmost regions with a very low population density and of island, cross-border or mountain regions;
  - (c) addresses urban-rural linkages, in terms of access to affordable, high quality infrastructure and services, and problems in regions with a high concentration of socially marginalised communities.

## 7. COOPERATION ACTIVITIES

### 7.1 Coordination and complementarity

1. Member States shall seek complementarity between cooperation activities and other actions supported by the ESI Funds.
2. Member States shall ensure that cooperation activities make an effective contribution to the objectives of the Union strategy for smart, sustainable and inclusive growth and that cooperation is organised in support of wider policy goals. To achieve this Member States and the Commission shall, in accordance with their respective responsibilities, ensure complementarity and coordination with other Union-funded programmes or instruments.

3. To reinforce the effectiveness of cohesion policy Member States shall seek coordination and complementarity between programmes under the European territorial cooperation goal and the Investment for growth and jobs goal, in particular to ensure coherent planning and facilitate the implementation of large-scale investment.
4. Member States shall, where appropriate, ensure that the objectives of macro-regional and sea-basin strategies form part of the overall strategic planning, in Partnership Agreements, in accordance with Article 15(2) of this Regulation, and in programmes in the regions and Member States concerned in accordance with the relevant provisions of the Fund-specific rules. Member States shall seek also to ensure that where macro-regional and sea basin strategies have been put in place, the ESI Funds support their implementation in accordance with Article 15(2) of this Regulation and the relevant provisions of the Fund-specific rules and in line with the needs of the programme area identified by the Member States. To ensure efficient implementation there shall also be coordination with other Union-funded instruments and other relevant instruments.
5. Member States shall, where appropriate, make use of the possibility of carrying out interregional and transnational actions with beneficiaries located in at least one other Member State within the framework of the operational programmes under the Investment for growth and jobs goal, including on the implementation of relevant research and innovation measures emanating from their 'smart specialisation' strategies.
6. Member States and regions shall make the best use of territorial cooperation programmes in overcoming barriers to cooperation beyond administrative borders, while contributing to the Union strategy for smart, sustainable and inclusive growth as well as strengthening economic, social and territorial cohesion. In this context, particular attention shall be paid to the regions covered by Article 349 TFEU.

#### 7.2 Cross-border, transnational and interregional cooperation under the ERDF

1. Member States and regions shall seek to make use of cooperation to achieve critical mass, inter alia, in the field of ICT and research and innovation, and also to promote the development of joint smart specialisation approaches and partnerships among educational institutions. Interregional cooperation shall, where appropriate, include fostering cooperation between innovative research-intensive clusters and exchanges between research institutions taking into consideration the experience of "Regions of Knowledge" and "Research Potential in Convergence and Outermost Regions" under the Seventh Framework Programme for Research.
2. Member States and regions shall, in the areas concerned, seek to draw on cross-border and transnational cooperation to:
  - (a) ensure that areas that share major geographical features (islands, lakes, rivers, sea basins or mountain ranges) support the joint management and promotion of their natural resources;
  - (b) exploit the economies of scale that can be achieved, in particular with regard to investment related to the shared use of common public services;
  - (c) promote coherent planning and development of cross-border network infrastructure, in particular missing cross-border links, and environmentally friendly and interoperable transport modes in larger geographical areas;
  - (d) achieve critical mass, particularly in the field of research and innovation and ICT, education and in relation to measures improving the competitiveness of SMEs;
  - (e) strengthen cross-border labour market services to foster the mobility of workers across borders;
  - (f) improve cross-border governance.
3. Member States and regions shall seek to make use of interregional cooperation to reinforce the effectiveness of Cohesion Policy by encouraging exchange of experience between regions and cities to enhance design and implementation of programmes under the Investment for growth and jobs goal and the European territorial cooperation goal.

### 7.3 Contribution of mainstream programmes to macro-regional and sea-basin strategies

1. In accordance with point (a)(ii) of Article 15(2) of this Regulation and the relevant provisions of the Fund-specific rules Member States shall seek to ensure successful mobilisation of Union funding for macro-regional and sea-basin strategies in line with the needs of the programme area identified by the Member States. Ensuring successful mobilisation may be done, among other actions, by prioritising operations deriving from macro-regional and sea-basin strategies by organising specific calls for them or giving priority to these operations in the selection process through identification of operations which can be jointly financed from different programmes.
2. Member States shall consider making use of relevant transnational programmes as frameworks to support the range of policies and funds needed to implement macro-regional and sea-basin strategies.
3. Member States shall promote, where appropriate, the use of ESI Funds in the context of macro-regional strategies, for the creation of European transport corridors, including supporting modernisation of customs, the prevention, preparedness and response to natural disasters, water management at river basin level, green infrastructure, integrated maritime cooperation across borders and sectors, R&I and ICT networks and management of shared marine resources in the sea basin and protection of marine biodiversity.

### 7.4 Transnational cooperation under the ESF

1. Member States shall seek to address policy areas identified in the relevant Council recommendations in order to maximise mutual learning.
  2. Member States shall, where appropriate, select the themes for transnational activities and establish appropriate implementation mechanisms in accordance with their specific needs.
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## ANNEX II

**METHOD FOR ESTABLISHING THE PERFORMANCE FRAMEWORK**

1. The performance framework shall consist of milestones established for each priority, with the exception of priorities dedicated to technical assistance and programmes dedicated to financial instruments in accordance with Article 39, for the year 2018 and targets established for 2023. The milestones and targets shall be presented in accordance with the format set out in table 1.

Table 1: Standard format for the performance framework

Priority	Indicator and measurement unit, where appropriate		Milestone for 2018	Target for 2023

2. Milestones are intermediate targets, directly linked to the achievement of the specific objective of a priority, where appropriate, expressing the intended progress towards the targets set for the end of the period. Milestones established for 2018 shall include financial indicators, output indicators and, where appropriate result indicators, which are closely linked to the supported policy interventions. Result indicators shall not be taken into account for the purposes of Article 22(6) and (7). Milestones may also be established for key implementation steps.
3. Milestones and targets shall be:
- realistic, achievable, relevant, capturing essential information on the progress of a priority;
  - consistent with the nature and character of the specific objectives of the priority;
  - transparent, with objectively verifiable targets and the source data identified and, where possible, publicly available;
  - verifiable, without imposing a disproportionate administrative burden;
  - consistent across programmes, where appropriate.
4. The targets for 2023 for a given priority shall be established taking into account the amount of performance reserve related to the priority.
5. In duly justified cases, such as a significant change in the economic, environmental and labour market conditions in a Member State or region, and in addition to amendments resulting from changes in allocations for a given priority, that Member State may propose the revision of milestones and targets in accordance with Article 30.



## ANNEX III

**PROVISIONS FOR DETERMINING THE SCOPE AND THE LEVEL OF SUSPENSION OF COMMITMENTS OR PAYMENTS REFERRED TO IN ARTICLE 23(11)**

## 1. DETERMINING THE LEVEL OF SUSPENSION OF COMMITMENTS

The maximum level of suspension applied to a Member State shall in the first instance be determined taking into account the ceilings set out in points (a) to (c) of the third subparagraph of Article 23(11). That level shall be reduced if one or more of the following apply:

- (a) where the unemployment rate in the Member State for the year preceding the trigger event referred to in Article 23(9) exceeds the average rate for the Union by more than two percentage points, the maximum level of suspension shall be reduced by 15 %;
- (b) where the unemployment rate in the Member State for the year preceding the trigger event referred to in Article 23(9) exceeds the average rate for the Union by more than five percentage points, the maximum level of suspension shall be reduced by 25 %;
- (c) where the unemployment rate in the Member State for the year preceding the trigger event referred to in Article 23(9) exceeds the average rate for the Union by more than eight percentage points, the maximum level of suspension shall be reduced by 50 %;
- (d) where the proportion of people at risk of poverty or social exclusion in the Member State exceeds the average for the Union by more than 10 percentage points for the year preceding the trigger event referred to in Article 23(9), the maximum level of suspension shall be reduced by 20 %;
- (e) where the Member State experiences a contraction of real GDP for two or more consecutive years preceding the trigger event referred to in Article 23(9), the maximum level of suspension shall be reduced by 20 %;
- (f) where the suspension concerns commitments for the years 2018, 2019 or 2020, a reduction shall be applied to the level resulting from the application of Article 23(11) as follows:
  - (i) for the year 2018, the level of suspension shall be reduced by 15 %;
  - (ii) for the year 2019, the level of suspension shall be reduced by 25 %;
  - (iii) for the year 2020, the level of suspension shall be reduced by 50 %.

The reduction in the level of suspension resulting from the application of points (a) to (f) shall not exceed in total 50 %.

In the event that the situation described in point (b) or (c) occurs simultaneously with both points (d) and (e), the effect of the suspension shall be postponed by one year.

## 2. DETERMINING THE SCOPE OF SUSPENSION OF COMMITMENTS ACROSS PROGRAMMES AND PRIORITIES

A suspension of commitments applied to a Member State shall in the first instance proportionally affect all programmes and priorities.

However, the following programmes and priorities shall be excluded from the scope of the suspension:

- (i) programmes or priorities which are already subject to a suspension decision adopted in accordance with Article 23(6);
- (ii) programmes or priorities whose resources are to be increased as a result of a reprogramming request addressed by the Commission in accordance with Article 23(1) in the year of the trigger event referred to in Article 23(9);
- (iii) programmes or priorities whose resources have been increased within the two years preceding the trigger event referred to in Article 23(9) as a result of a decision adopted in accordance with Article 23(5);

(iv) programmes or priorities which are of critical importance to addressing adverse economic or social conditions. Such programmes or priorities shall cover programmes or priorities supporting investments of particular importance to the Union related to the YEL. Programmes or priorities may be considered of such critical importance when they support investments related to the implementation of recommendations addressed to the Member State concerned in the framework of the European Semester and aimed at structural reforms, or related to priorities supporting poverty reduction or to financial instruments for the competitiveness of SMEs.

3. DETERMINING THE FINAL LEVEL OF SUSPENSION OF COMMITMENTS FOR THE PROGRAMMES FALLING WITHIN THE SCOPE OF THE SUSPENSION

The exclusion of a priority within a programme shall be carried out by reducing the commitment of the programme pro rata to the allocation to the priority.

The level of suspension to be applied to the commitments of the programmes shall be that which is necessary to reach the aggregate level of suspension determined under point 1.

4. DETERMINING THE SCOPE AND THE LEVEL OF SUSPENSION OF PAYMENTS

The programmes and priorities referred to under point 2(i) to (iv) shall also be excluded from the scope of suspension of payments.

The level of suspension to be applied shall not exceed 50 % of the payments of programmes and priorities.

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## ANNEX IV

**IMPLEMENTATION OF FINANCIAL INSTRUMENTS: FUNDING AGREEMENTS**

1. Where a financial instrument is implemented under points (a) and (b) of Article 38(4), the funding agreement shall include the terms and conditions for making contributions from the programme to the financial instrument and shall include at least the following elements:
  - (a) the investment strategy or policy including implementation arrangements, financial products to be offered, final recipients targeted, and envisaged combination with grant support (as appropriate);
  - (b) a business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 37(2);
  - (c) the target results that the financial instrument concerned is expected to achieve to contribute to the specific objectives and results of the relevant priority;
  - (d) provisions for monitoring of the implementation of investments and of deal flows including reporting by the financial instrument to the fund of funds and/or the managing authority to ensure compliance with Article 46;
  - (e) audit requirements, such as minimum requirements for documentation to be kept at the level of the financial instrument (and at the level of the fund of funds where appropriate), and requirements in relation to the maintenance of separate records for the different forms of support in compliance with Article 37(7) and (8) (where applicable), including provisions and requirements regarding access to documents by audit authorities of Member States, Commission auditors and the European Court of Auditors in order to ensure a clear audit trail, in accordance with Article 40;
  - (f) requirements and procedures for managing the phased contribution provided by the programme in accordance with Article 41 and for the forecast of deal flows, including requirements for fiduciary/separate accounting as set out in Article 38(6);
  - (g) requirements and procedures for managing interest and other gains generated as referred to in Article 43, including acceptable treasury operations/investments, and the responsibilities and liabilities of the parties concerned;
  - (h) provisions regarding the calculation and payment of management costs incurred or of the management fees of the financial instrument;
  - (i) provisions regarding the re-utilisation of resources attributable to the support from the ESI Funds until the end of the eligibility period in compliance with Article 44;
  - (j) provisions regarding the use of resources attributable to the support of the ESI Funds after the end of the eligibility period in compliance with Article 45 and an exit policy for the contribution from the ESI Funds out of the financial instrument;
  - (k) conditions for a possible total or partial withdrawal of programme contributions from programmes to financial instruments, including the fund of funds where applicable;
  - (l) provisions to ensure that bodies implementing financial instruments manage financial instruments with independence and in accordance with the relevant professional standards, and act in the exclusive interest of the parties providing contributions to the financial instrument;
  - (m) provisions for the winding-up of the financial instrument.

In addition, where financial instruments are organised through a fund of funds, the funding agreement between the managing authority and the body that implements the fund of funds must also provide for the appraisal and selection of bodies implementing the financial instruments, including calls for expression of interest or public procurement procedures.

2. Strategy documents referred to under Article 38(8) for financial instruments implemented under point (c) of Article 38(4) shall include at least the following elements:
  - (a) the investment strategy or policy of the financial instrument, general terms and conditions of envisaged debt products, target recipients and actions to be supported;

- (b) a business plan or equivalent documents for the financial instrument to be implemented, including the expected leverage effect referred to in Article 37(2);
  - (c) the use and re-use of resources attributable to the support of the ESI Funds in accordance with Articles 43, 44 and 45;
  - (d) monitoring and reporting of the implementation of the financial instrument to ensure compliance with Article 46.
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## ANNEX V

## DEFINITION OF FLAT-RATES FOR NET-REVENUE GENERATING PROJECTS

	Sector	Flat rates
1	ROAD	30 %
2	RAIL	20 %
3	URBAN TRANSPORT	20 %
4	WATER	25 %
5	SOLID WASTE	20 %

## ANNEX VI

## ANNUAL BREAKDOWN OF COMMITMENT APPROPRIATIONS FOR 2014 TO 2020

Adjusted annual profile (including YEI top-up)

	2014	2015	2016	2017	2018	2019	2020	Total
EUR, 2011 prices	44 677 333 745	45 403 321 660	46 044 910 729	46 544 721 007	47 037 288 589	47 513 211 563	47 924 907 446	325 145 694 739

## ANNEX VII

## ALLOCATION METHODOLOGY

**Allocation method for the less developed regions eligible under the Investment for growth and jobs goal, referred to in point (a) of the first subparagraph of Article 90(2)**

1. Each Member State's allocation shall be the sum of the allocations for its individual eligible NUTS level 2 regions, calculated in accordance with the following steps:
  - (a) determination of an absolute amount (in EUR) obtained by multiplying the population of the region concerned by the difference between that region's GDP per capita, measured in PPS, and the EU-27 average GDP per capita (in PPS);
  - (b) application of a percentage to the above absolute amount in order to determine that region's financial envelope; this percentage shall be graduated to reflect the relative prosperity, measured in PPS, as compared to the EU-27 average, of the Member State in which the eligible region is situated, i.e.:
    - (i) for regions in Member States whose level of GNI per capita is below 82 % of the EU-27 average: 3,15 %;
    - (ii) for regions in Member States whose level of GNI per capita is between 82 % and 99 % of the EU-27 average: 2,70 %;
    - (iii) for regions in Member States whose level of GNI per capita is over 99 % of the EU-27 average: 1,65 %;
  - (c) to the amount obtained in accordance with point (b) is added, if applicable, an amount resulting from the allocation of a premium of EUR 1 300 per unemployed person per year, applied to the number of persons unemployed in that region exceeding the number that would be unemployed if the average unemployment rate of all the EU less developed regions applied.

**Allocation method for transition regions eligible under the Investment for growth and jobs goal, referred to in point (b) of the first subparagraph of Article 90(2)**

2. Each Member State's allocation shall be the sum of the allocations for its individual eligible NUTS level 2 regions, calculated in accordance with the following steps:
  - (a) determination of the minimum and maximum theoretical aid intensity for each eligible transition region. The minimum level of support is determined by the average per capita aid intensity per Member State before the application of the regional safety net, allocated to the more developed regions of that Member State. If the Member State has no more developed regions, the minimum level of support will correspond to the initial average per capita aid intensity of all more developed regions, i.e. EUR 19,80 per head and per year. The maximum level of support refers to a theoretical region with a GDP per head of 75 % of the EU-27 average and is calculated using the method defined in points (a) and (b) of paragraph 1. Of the amount obtained by this method, 40 % is taken into account;
  - (b) calculation of initial regional allocations, taking into account regional GDP per capita (in PPS) through a linear interpolation of the region's relative GDP per capita compared to EU-27;
  - (c) to the amount obtained in accordance with point (b) is added, if applicable, an amount resulting from the allocation of a premium of EUR 1 100 per unemployed person per year, applied to the number of persons unemployed in that region exceeding the number that would be unemployed if the average unemployment rate of all the less developed regions applied.

**Allocation method for the more developed regions eligible under the Investment for growth and jobs goal, referred to in point (c) of the first subparagraph of Article 90(2)**

3. The total initial theoretical financial envelope shall be obtained by multiplying an aid intensity per head and per year of EUR 19,80 by the eligible population.
4. The share of each Member State concerned shall be the sum of the shares of its eligible NUTS level 2 regions, which are determined on the basis of the following criteria, weighted as indicated:
  - (a) total regional population (weighting 25 %);

- (b) number of unemployed people in NUTS level 2 regions with an unemployment rate above the average of all more developed regions (weighting 20 %);
- (c) employment to be added to reach the Union strategy for smart, sustainable and inclusive growth target for regional employment rate (ages 20 to 64) of 75 % (weighting 20 %);
- (d) number of persons aged 30 to 34 with tertiary educational attainment to be added to reach the Union strategy for smart, sustainable and inclusive growth target of 40 % (weighting 12,5 %);
- (e) number of early leavers from education and training (aged 18 to 24) to be subtracted to reach the Union strategy for smart, sustainable and inclusive growth target of 10 % (weighting 12,5 %);
- (f) difference between the observed GDP of the region (measured in PPS), and the theoretical regional GDP if the region were to have the same GDP per head as the most prosperous NUTS level 2 region (weighting 7,5 %);
- (g) population of NUTS level 3 regions with a population density below 12,5 inhabitants/km<sup>2</sup> (weighting 2,5 %).

#### **Allocation method for the Member States eligible for the Cohesion Fund under Article 90(3)**

5. The total theoretical financial envelope shall be obtained by multiplying the average aid intensity per head and per year of EUR 48 by the eligible population. Each eligible Member State's a priori allocation of this theoretical financial envelope corresponds to a percentage based on its population, surface area and national prosperity, and shall be obtained by applying the following steps:
  - (a) calculation of the arithmetical average of that Member State's population and surface area shares of the total population and surface area of all the eligible Member States. If, however, a Member State's share of total population exceeds its share of total surface area by a factor of five or more, reflecting an extremely high population density, only the share of total population will be used for this step;
  - (b) adjustment of the percentage figures so obtained by a coefficient representing one third of the percentage by which that Member State's GNI per capita (measured in purchasing power parities) for the period 2008-2010 exceeds or falls below the average GNI per capita of all the eligible Member States (average expressed as 100 %).
6. In order to reflect the significant needs of Member States, which acceded to the Union on or after 1 May 2004, in terms of transport and environment, their share of the Cohesion Fund will be set at a minimum of one third of their total final financial allocation after capping as defined in paragraphs 10 to 13 received on average over the period.
7. The allocation from the Cohesion Fund for the Member States defined in the second subparagraph of Article 90(3) shall be digressive over seven years. This transitional support will be of EUR 48 per capita in 2014, applied to the total population of the Member State. The amounts in the following years will be expressed as a percentage of the amount defined for 2014, the percentages being 71 % in 2015, 42 % in 2016, 21 % in 2017, 17 % in 2018, 13 % in 2019 and 8 % in 2020.

#### **Allocation method for the European territorial cooperation goal referred to in Article 4 of the ETC Regulation**

8. The allocation of resources by Member State, covering cross-border and transnational cooperation, and including the contribution from the ERDF to the European Neighbourhood Instrument and the Instrument for Pre-Accession Assistance, is determined as the weighted sum of the share of the population of border regions and of the share of the total population of each Member State. The weight is determined by the respective shares of the cross-border and transnational strands. The shares of the cross border and transnational cooperation components are 77,9 % and 22,1 %.

#### **Allocation method of the additional funding for regions referred to in point (e) of Article 92(1)**

9. An additional special allocation corresponding to an aid intensity of EUR 30 per inhabitant per year will be allocated to the outermost NUTS level 2 regions and the northern sparsely populated NUTS level 2 regions. That allocation will be distributed per region and Member State in a manner proportional to the total population of those regions.



**Maximum level of transfers from funds supporting cohesion**

10. In order to contribute to achieving adequate concentration of cohesion funding on the least developed regions and Member States and to the reduction of disparities in average per capita aid intensities, the maximum level of transfer (capping) from the Funds to each individual Member State will be 2,35 % of the GDP of the Member State. The capping will be applied on an annual basis, subject to adjustments necessary to accommodate the frontloading of the YEI, and will - if applicable - proportionally reduce all transfers (except for the more developed regions and European territorial cooperation goal) to the Member State concerned in order to obtain the maximum level of transfer. For Member States which acceded to the Union before 2013 and whose average real GDP growth 2008-2010 was lower than -1 %, the maximum level of transfer will be 2,59 %.
11. The ceilings referred to in paragraph 10 above include the contributions from the ERDF to the financing of the cross-border strand of the European Neighbourhood Instrument and of the Instrument for Pre-Accession Assistance. Those ceilings do not include the specific allocation of EUR 3 000 000 000 for the YEI.
12. Calculations of GDP by the Commission will be based on the statistics available in May 2012. Individual national growth rates of GDP for 2014 to 2020, as projected by the Commission in May 2012, will be applied for each Member State separately.
13. The rules described in paragraph 10 shall not result in allocations per Member State higher than 110 % of their level in real terms for the 2007-2013 programming period.

**Additional provisions**

14. For all regions whose GDP per capita (in PPS) was used as an eligibility criterion for the 2007-2013 programming period and was less than 75 % of the EU-25 average, but whose GDP per capita is above 75 % of the EU-27 average, the minimum level of support in 2014-2020 under the Investment for growth and jobs goal will correspond every year to 60 % of their former indicative average annual allocation under the Convergence allocation, calculated by the Commission within the multiannual financial framework 2007-2013.
15. No transition region shall receive less than what it would have received if it had been a more developed region. In order to determine the level of this minimum allocation, the allocation distribution method for more developed regions will be applied to all regions having a GDP per capita of at least 75 % of the EU-27 average.
16. The minimum total allocation from the Funds for a Member State shall correspond to 55 % of its individual 2007-2013 total allocation. The adjustments needed to fulfil this requirement shall be applied proportionally to the allocations from the Funds, excluding the allocations under the European territorial cooperation goal.
17. To address the effects of the economic crisis on Member States within the euro area on their level of prosperity, and in order to boost growth and job creation in these Member States, the Structural Funds will provide the following additional allocations:
  - (a) EUR 1 375 000 000 for the more developed regions of Greece;
  - (b) EUR 1 000 000 000 for Portugal, distributed as follows: EUR 450 000 000 for more developed regions, of which EUR 150 000 000 for Madeira, EUR 75 000 000 for the transition region and EUR 475 000 000 for the less developed regions;
  - (c) EUR 100 000 000 for the Border, Midland and Western region of Ireland;
  - (d) EUR 1 824 000 000 for Spain, of which EUR 500 000 000 for Extremadura, EUR 1 051 000 000 for the transition regions and EUR 273 000 000 for the more developed regions;
  - (e) EUR 1 500 000 000 for the less developed regions of Italy, out of which EUR 500 000 000 for non-urban areas.
18. In order to recognise the challenges posed by the situation of island Member States and the remoteness of certain parts of the Union, Malta and Cyprus shall receive, after applying the method of calculation referred to in paragraph 16, an additional envelope of EUR 200 000 000 and EUR 150 000 000 respectively under the Investment for growth and jobs goal and distributed as follows: one third for the Cohesion Fund and two thirds for the Structural Funds.

The Spanish regions of Ceuta and Melilla shall be allocated an additional total envelope of EUR 50 000 000 under the Structural Funds.

The outermost region of Mayotte shall be allocated a total envelope of EUR 200 000 000 under the Structural Funds.

19. To facilitate the adjustment of certain regions either to changes in their eligibility status or to the long-lasting effects of recent developments in their economy the following additional allocations are made:
- (a) for Belgium EUR 133 000 000, out of which EUR 66 500 000 for Limburg and EUR 66 500 000 for the transition regions of the Region of Wallonia;
  - (b) for Germany EUR 710 000 000, out of which EUR 510 000 000 for the former Convergence regions in the transition regions' category and EUR 200 000 000 for the Leipzig region;
  - (c) notwithstanding paragraph 10, the less developed regions of Hungary will be allocated an additional envelope of EUR 1 560 000 000, the less developed regions of the Czech Republic an additional envelope of EUR 900 000 000 and the less developed region of Slovenia an additional envelope of EUR 75 000 000, under the Structural Funds.
20. A total of EUR 150 000 000 will be allocated for the PEACE programme, of which EUR 106 500 000 for the United Kingdom and EUR 43 500 000 for Ireland. That programme will be implemented as a cross-border cooperation programme involving Northern Ireland and Ireland.

**Additional adjustments in accordance with Article 92(2)**

21. In addition to the amounts set out in Articles 91 and 92, Cyprus shall benefit from an additional allocation of EUR 94 200 000 in 2014 and EUR 92 400 000 in 2015 to be added to its Structural Funds allocation.
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## ANNEX VIII

**METHODOLOGY CONCERNING THE SPECIFIC ALLOCATION FOR THE YEI REFERRED TO IN ARTICLE 91**

- I. The breakdown of the specific allocation for the YEI shall be determined in accordance with the following steps:
    1. The number of young unemployed persons between the ages of 15-24 shall be identified in the eligible NUTS level 2 regions as defined in Article 16 of the ESF Regulation, namely NUTS level 2 regions that have youth unemployment rates for young persons aged 15 to 24 of more than 25 % in 2012 and, for Member States where the youth unemployment rate has increased by more than 30 % in 2012, regions that have youth unemployment rates of more than 20 % in 2012 (the 'eligible regions').
    2. The allocation corresponding to each eligible region shall be calculated on the basis of the ratio between the number of young unemployed persons in the eligible region and the total number of young unemployed persons referred to in point 1 in all eligible regions.
    3. The allocation for each Member State shall be the sum of the allocations for each of its eligible regions.
  - II. The specific allocation for the YEI shall not be taken into account for the purpose of applying the capping rules set out in Annex VII in relation to the allocation of the global resources.
  - III. For the determination of the specific allocation from the YEI to Mayotte, the youth unemployment rate and number of young unemployed persons shall be determined on the basis of the latest available data at national level as long as Eurostat data at NUTS level 2 are not available.
  - IV. The resources for the YEI may be revised upwards for the years 2016 to 2020 in the framework of the budgetary procedure in accordance with Article 14 of Regulation (UE, Euratom) No 1311/2013. The breakdown by Member State of the additional resources shall follow the same steps as applied for the initial allocation but shall refer to the latest available annual data.
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## ANNEX IX

**METHODOLOGY FOR DETERMINING MINIMUM SHARE OF THE ESF**

The additional percentage share to be added to the share of Structural Funds resources referred to in Article 92(4) allocated in a Member State to the ESF which corresponds to the share of that Member State for the 2007-2013 programming period shall be determined as follows, based on employment rates (for persons between the ages of 20-64) of reference year 2012:

- where the employment rate is 65 % or less the share shall be increased by 1,7 percentage points;
- where the employment rate is above 65 % but not higher than 70 % the share shall be increased by 1,2 percentage points;
- where the employment rate is above 70 % but not higher than 75 % the share shall be increased by 0,7 percentage points;
- where the employment rate is above 75 %, no increase shall be required.

The total percentage share of a Member State after the addition shall not exceed 52 % of Structural Funds resources referred to in Article 92(4).

For Croatia the share of Structural Funds resources, excluding the European Territorial Cooperation goal, allocated to the ESF for the 2007-2013 programming period shall be the average share of convergence regions of those Member States which acceded to the Union on or after 1 January 2004.

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## ANNEX X

## ADDITIONALITY

## 1. PUBLIC OR EQUIVALENT STRUCTURAL EXPENDITURE

In Member States in which less developed regions cover at least 65 % of the population, the figure on gross fixed capital formation reported in the Stability and Convergence Programmes, prepared by Member States in accordance with Regulation (EC) No 1466/97 to present their medium term budgetary strategy, will be used to determine public or equivalent structural expenditure. The figure to be used shall be that reported in the context of the general government balance and debt and related to general government budgetary prospects and shall be presented as a percentage of GDP.

In those Member States in which less developed regions cover more than 15 % and less than 65 % of the population, the total figure on gross fixed capital formation in the less developed regions will be used to determine public or equivalent structural expenditure. It shall be reported in the same format as laid down in the first subparagraph.

## 2. VERIFICATION

Verifications of additionality in accordance with Article 95(5) are subject to the following rules:

## 2.1 Ex ante verification

- (a) When a Member State submits a Partnership Agreement, it shall provide information on the planned profile of expenditure in the format of Table 1.

Table 1

Expenditure of the General Government as a share of GDP	2014	2015	2016	2017	2018	2019	2020
P51	X	X	X	X	X	X	X

- (b) Member States, in which less developed regions cover more than 15 % and less than 65 % of the population, shall also provide information on the planned profile of expenditure in those less developed regions in the format of Table 2.

Table 2

	2014	2015	2016	2017	2018	2019	2020
Gross Fixed Capital Formation of the General Government in the less developed regions as a share of GDP	X	X	X	X	X	X	X

- (c) Member States shall provide to the Commission information on the main macroeconomic indicators and forecasts underlying the level of public or equivalent structural expenditure.
- (d) Member States, in which less developed regions cover more than 15 % and less than 65 % of the population, shall also provide to the Commission information on the method used to estimate gross fixed capital formation in those regions. For this purpose, Member States shall use regional level public investment data where available. In the event that such data is not available, or in other duly justified cases, including where a Member State for the period 2014-2020 has significantly changed the regional breakdown as defined in Regulation (EC) No 1059/2003, gross fixed capital formation can be estimated by applying regional public expenditure indicators or regional population to national level public investment data.
- (e) Once there is agreement by the Commission and the Member State, Table 1 and, where applicable, Table 2 will be included in the Partnership Agreement of the Member State concerned as the reference level of the public or equivalent structural expenditure to be maintained in the years 2014-2020.

## 2.2 Mid-term verification

- (a) At the time of the mid-term verification, a Member State shall be deemed to have maintained the level of public or equivalent structural expenditure if the annual average of expenditure in the years 2014-2017 is equal to or higher than the reference level of expenditure set in the Partnership Agreement.
- (b) Following the mid-term verification, the Commission may revise, in consultation with a Member State, the reference level of public or equivalent structural expenditure in the Partnership Agreement if the economic situation of the Member State has significantly changed from that estimated at the time of adoption of the Partnership Agreement.

## 2.3 Ex post verification

At the time of the ex post verification, a Member State shall be deemed to have maintained the level of public or equivalent structural expenditure if the annual average of expenditure in the years 2014-2020 is equal to or higher than the reference level of expenditure set in the Partnership Agreement.

## 3. FINANCIAL CORRECTION RATES FOLLOWING EX POST VERIFICATION

Where the Commission decides to carry out a financial correction in accordance with Article 95(6), the rate of financial correction shall be obtained by subtracting 3 % from the difference between the reference level in the Partnership Agreement and the level achieved, expressed as a percentage of the reference level, and then dividing the result by 10. The financial correction shall be determined by applying that rate of financial correction to the Funds' contribution to the Member State concerned for the less developed regions for the full programming period.

If the difference between the reference level in the Partnership Agreement and the level achieved, expressed as a percentage of the reference level in the Partnership Agreement, is 3 % or less, no financial correction shall be made.

The financial correction shall not exceed 5 % of the Funds' allocation to the Member State concerned for the less developed regions for the full programming period.

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## ANNEX XI

## Ex ante conditionalities

## PART I: Thematic ex ante conditionalities

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>1. Strengthening research, technological development and innovation</p> <p>(R&amp;D target)</p> <p>(referred to in point (1) of the first paragraph of Article 9)</p>	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— All investment priorities under thematic objective no. 1.</li> </ul>	<p>1.1. Research and innovation: The existence of a national or regional smart specialisation strategy in line with the National Reform Program, to leverage private research and innovation expenditure, which complies with the features of well-performing national or regional R&amp;I systems.</p>	<ul style="list-style-type: none"> <li>— A national or regional smart specialisation strategy is in place that:</li> <li>— is based on a SWOT or similar analysis to concentrate resources on a limited set of research and innovation priorities;</li> <li>— outlines measures to stimulate private RTD investment;</li> <li>— contains a monitoring mechanism.</li> <li>— A framework outlining available budgetary resources for research and innovation has been adopted.</li> </ul>
	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Enhancing research and innovation (R&amp;I) infrastructure and capacities to develop R&amp;I excellence, and promoting centres of competence, in particular those of European interest.</li> </ul>	<p>1.2 Research and Innovation infrastructure. The existence of a multi-annual plan for budgeting and prioritisation of investments.</p>	<ul style="list-style-type: none"> <li>— An indicative multi-annual plan for budgeting and prioritisation of investments linked to Union priorities, and, where appropriate, the European Strategy Forum on Research Infrastructures (ESFRI) has been adopted.</li> </ul>
<p>2. Enhancing access to, and use and quality of, information and communication technologies (ICT) (Broadband target)</p> <p>(referred to in point (2) of the first paragraph of Article 9)</p>	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Developing ICT products and services, e-commerce, and enhancing demand for ICT.</li> <li>— Strengthening ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health.</li> </ul>	<p>2.1. Digital growth: A strategic policy framework for digital growth to stimulate affordable, good quality and interoperable ICT-enabled private and public services and increase uptake by citizens, including vulnerable groups, businesses and public administrations including cross border initiatives.</p>	<ul style="list-style-type: none"> <li>— A strategic policy framework for digital growth, for instance, within the national or regional smart specialisation strategy is in place that contains:</li> <li>— budgeting and prioritisation of actions through a SWOT or similar analysis consistent with the Scoreboard of the Digital Agenda for Europe;</li> <li>— an analysis of balancing support for demand and supply of ICT should have been conducted;</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— indicators to measure progress of interventions in areas such as digital literacy, e-inclusion, e-accessibility, and progress of e-health within the limits of Article 168 TFEU which are aligned, where appropriate, with existing relevant sectoral Union, national or regional strategies;</li> <li>— assessment of needs to reinforce ICT capacity-building.</li> </ul>
	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Extending broadband deployment and the roll-out of high-speed networks and supporting the adoption of emerging technologies and networks for the digital economy.</li> </ul>	<p>2.2. Next Generation Network (NGN) Infrastructure: The existence of national or regional NGN Plans which take account of regional actions in order to reach the Union high-speed Internet access targets, focusing on areas where the market fails to provide an open infrastructure at an affordable cost and of a quality in line with the Union competition and State aid rules, and to provide accessible services to vulnerable groups.</p>	<ul style="list-style-type: none"> <li>— A national or regional NGN Plan is in place that contains: <ul style="list-style-type: none"> <li>— a plan of infrastructure investments based on an economic analysis taking account of existing private and public infrastructures and planned investments;</li> <li>— sustainable investment models that enhance competition and provide access to open, affordable, quality and future-proof infrastructure and services;</li> <li>— measures to stimulate private investment.</li> </ul> </li> </ul>
<p>3. Enhancing the competitiveness of small and medium-sized enterprises (SMEs)</p> <p>(referred to in point (3) of the first paragraph of Article 9)</p>	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms, including through business incubators.</li> <li>— Supporting the capacity of SMEs to grow in regional, national and international market, and to engage in innovation processes.</li> </ul>	<p>3.1. Specific actions have been carried out to underpin the promotion of entrepreneurship taking into account the Small Business Act (SBA).</p>	<ul style="list-style-type: none"> <li>— The specific actions are: <ul style="list-style-type: none"> <li>— measures have been put in place with the objective of reducing the time and cost involved in setting-up a business taking account of the targets of the SBA;</li> <li>— measures have been put in place with the objective of reducing the time needed to get licenses and permits to take up and perform the specific activity of an enterprise taking account of the targets of the SBA;</li> </ul> </li> </ul>



Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— a mechanism is in place to monitor the implementation of the measures of the SBA which have been put in place and assess the impact on SMEs.</li> </ul>
<p>4. Supporting the shift towards a low-carbon economy in all sectors</p> <p>(referred to in point (4) of the first paragraph of Article 9)</p>	<p>ERDF + Cohesion Fund:</p> <ul style="list-style-type: none"> <li>— Supporting energy efficiency, smart energy management and renewable energy use in public infrastructure, including in public buildings, and in the housing sector.</li> </ul>	<p>4.1. Actions have been carried out to promote cost-effective improvements of energy end use efficiency and cost-effective investment in energy efficiency when constructing or renovating buildings.</p>	<ul style="list-style-type: none"> <li>— The actions are: <ul style="list-style-type: none"> <li>— measures to ensure minimum requirements are in place related to the energy performance of buildings consistent with Article 3, Article 4 and Article 5 of Directive 2010/31/EU of the European Parliament and of the Council <sup>(1)</sup>;</li> <li>— measures necessary to establish a system of certification of the energy performance of buildings consistent with Article 11 of Directive 2010/31/EU;</li> <li>— measures to ensure strategic planning on energy efficiency, consistent with Article 3 of Directive 2012/27/EU of the European Parliament and of the Council <sup>(2)</sup>;</li> <li>— measures consistent with Article 13 of Directive 2006/32/EC of the European Parliament and of the Council <sup>(3)</sup> on energy end-use efficiency and energy services to ensure the provision to final customers of individual meters in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings.</li> </ul> </li> </ul>
	<p>ERDF + Cohesion Fund:</p> <ul style="list-style-type: none"> <li>— Promoting the use of high-efficiency co-generation of heat and power based on useful demand.</li> </ul>	<p>4.2. Actions have been carried out to promote high-efficiency co-generation of heat and power.</p>	<ul style="list-style-type: none"> <li>— The actions are: <ul style="list-style-type: none"> <li>— Support for co-generation is based on useful heat demand and primary energy savings consistent with Article 7(1) and points (a) and (b) of Article 9(1) of Directive 2004/8/EC, Member States or their competent bodies have evaluated the existing legislative and regulatory framework with regard to authorisation procedures or other procedures in order to:</li> </ul> </li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<p>(a) encourage the design of co-generation units to match economically justifiable demands for useful heat output and avoid production of more heat than useful heat; and</p> <p>(b) reduce the regulatory and non-regulatory barriers to an increase in co-generation.</p>
	<p>ERDF + Cohesion Fund:</p> <p>— Promoting the production and distribution of energy derived from renewable sources.</p>	<p>4.3. Actions have been carried out to promote the production and distribution of renewable energy sources <sup>(4)</sup>.</p>	<p>— Transparent support schemes, priority in grid access or guaranteed access and priority in dispatching, as well as standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public are in place consistent with Article 14(1), Article 16(2) and 16(3) of Directive 2009/28/EC of the European Parliament and of the Council <sup>(4)</sup>.</p> <p>— A Member State has adopted a national renewable energy action plan consistent with Article 4 of Directive 2009/28/EC.</p>
<p>5. Promoting climate change adaptation, risk prevention and management</p> <p>(Climate change target) (referred to in point (5) of the first paragraph of Article 9)</p>	<p>ERDF + Cohesion Fund:</p> <p>— Promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems.</p>	<p>5.1. Risk prevention and risk management: the existence of national or regional risk assessments for disaster management, taking into account climate change adaptation</p>	<p>— A national or regional risk assessment with the following elements shall be in place:</p> <p>— a description of the process, methodology, methods, and non-sensitive data used for risk assessment as well as of the risk-based criteria for the prioritisation of investment;</p> <p>— a description of single-risk and multi-risk scenarios;</p> <p>— taking into account, where appropriate, national climate change adaptation strategies.</p>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>6. Preserving and protecting the environment and promoting resource efficiency</p> <p>(referred to in point (6) of the first paragraph of Article 9)</p>	<p>ERDF + Cohesion Fund:</p> <p>— Investing in the water sector to meet the requirements of the Union's environmental acquis and to address needs, identified by the Member States for investment that goes beyond those requirements.</p>	<p>6.1. Water sector: The existence of a) a water pricing policy which provides adequate incentives for users to use water resources efficiently and b) an adequate contribution of the different water uses to the recovery of the costs of water services at a rate determined in the approved river basin management plan for investment supported by the programmes.</p>	<p>— In sectors supported by the ERDF and the Cohesion Fund, a Member State has ensured a contribution of the different water uses to the recovery of the costs of water services by sector consistent with the first indent of Article 9(1) of Directive 2000/60/EC having regard, where appropriate, to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.</p> <p>— The adoption of a river basin management plan for the river basin district consistent with Article 13 of Directive 2000/60/EC</p>
	<p>ERDF + Cohesion Fund:</p> <p>— Investing in the waste sector to meet the requirements of the Union's environmental acquis and to address needs, identified by the Member States, for investment that goes beyond those requirements.</p>	<p>6.2. Waste sector: Promoting economically and environmentally sustainable investments in the waste sector particularly through the development of waste management plans consistent with Directive 2008/98/EC, and with the waste hierarchy.</p>	<p>— An implementation report as requested by Article 11(5) of Directive 2008/98/EC has been submitted to the Commission on progress towards meeting the targets set out in Article 11 of Directive 2008/98/EC.</p> <p>— The existence of one or more waste management plans as required under Article 28 of Directive 2008/98/EC;</p> <p>— The existence of waste prevention programmes, as required under Article 29 of Directive 2008/98/EC;</p> <p>— Necessary measures to achieve the targets on preparation for re-use and recycling by 2020 consistent with Article 11(2) of Directive 2008/98/EC have been adopted.</p>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>7. Promoting sustainable transport and removing bottlenecks in key network infrastructures</p> <p>(referred to in point (7) of the first paragraph of Article 9)</p>	<p>ERDF + Cohesion Fund:</p> <ul style="list-style-type: none"> <li>— Supporting a multimodal Single European Transport Area by investing in the TEN-T.</li> <li>— Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures.</li> <li>— Developing and improving environmentally-friendly (including low-noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Enhancing regional mobility by connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.</li> </ul>	<p>7.1. Transport: The existence of a comprehensive plan or plans or framework or frameworks for transport investment in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks.</p>	<ul style="list-style-type: none"> <li>— The existence of a comprehensive transport plan or plans or framework or frameworks for transport investment which complies with legal requirements for strategic environmental assessment and sets out: <ul style="list-style-type: none"> <li>— the contribution to the single European Transport Area consistent with Article 10 of Regulation (EU) No 1315/2013 of the European Parliament and of the Council<sup>(3)</sup>, including priorities for investments in: <ul style="list-style-type: none"> <li>— the core TEN-T network and the comprehensive network where investment from the ERDF and the Cohesion Fund is envisaged; and</li> <li>— secondary connectivity;</li> </ul> </li> <li>— a realistic and mature pipeline for projects for which support from the ERDF and the Cohesion Fund is envisaged;</li> </ul> </li> <li>— Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.</li> </ul>
	<p>ERDF + Cohesion Fund:</p> <ul style="list-style-type: none"> <li>— Supporting a multimodal Single European Transport Area by investing in the TEN-T.</li> <li>— Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures.</li> </ul>	<p>7.2. Railway: The existence within the comprehensive transport plan or plans or framework or frameworks of a specific section on railway development in accordance with the Member States' institutional set-up (including concerning public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. The investments cover mobile assets, interoperability and capacity- building.</p>	<ul style="list-style-type: none"> <li>— The existence of a section on railway development within the transport plan or plans or framework or frameworks as set out above which complies with legal requirements for strategic environmental assessment (SEA) and sets out a realistic and mature project pipeline (including a timetable and budgetary framework);</li> <li>— Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	<ul style="list-style-type: none"> <li>— Developing and improving environmentally-friendly (including low-noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Enhancing regional mobility by connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.</li> </ul>		
	<p>ERDF + Cohesion Fund:</p> <ul style="list-style-type: none"> <li>— Supporting a multimodal Single European Transport Area by investing in the TEN-T.</li> <li>— Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures.</li> <li>— Developing and improving environmentally-friendly (including low-noise) and low-carbon transport systems, including inland waterways and maritime transport, ports, multimodal links and airport infrastructure, in order to promote sustainable regional and local mobility.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.</li> </ul>	<p>7.3. Other modes of transport, including inland-waterways and maritime transport, ports, multimodal links and airport infrastructure: the existence within the comprehensive transport plan or plans or framework or frameworks of a specific section on inland-waterways and maritime transport, ports, multimodal links and airport infrastructure, which contribute to improving connectivity to the TEN-T comprehensive and core networks and to promoting sustainable regional and local mobility.</p>	<ul style="list-style-type: none"> <li>— The existence of a section on inland-waterways and maritime transport, ports, multimodal links and airport infrastructure within the transport plan or plans or framework or frameworks which: <ul style="list-style-type: none"> <li>— complies with legal requirements for strategic environmental assessment;</li> <li>— sets out a realistic and mature project pipeline (including a timetable and budgetary framework);</li> </ul> </li> <li>— Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.</li> </ul>
	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Improving energy efficiency and security of supply through the development of smart energy distribution, storage and transmission systems and through the integration of distributed generation from renewable sources.</li> </ul>	<p>7.4 Development of smart energy distribution, storage and transmission systems.</p> <p>The existence of comprehensive plans for investments in smart energy infrastructure, and of regulatory measures, which contribute to improving energy efficiency and security of supply</p>	<ul style="list-style-type: none"> <li>— Comprehensive plans describing the national energy infrastructure priorities are in place that are: <ul style="list-style-type: none"> <li>— in accordance with Article 22 of Directive 2009/72/EC and of Directive 2009/73/EC, where applicable, and</li> </ul> </li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— consistent with the relevant regional investment plans under Article 12 and with the Union-wide ten-year network development plan in accordance with point (b) of Article 8(3) of Regulation (EC) No 714/2009 of the European Parliament and of the Council <sup>(6)</sup> and with Regulation (EC) No 715/2009 of the European Parliament and of the Council <sup>(7)</sup>, and</li> <li>— compatible with Article 3(4) of Regulation (EU) No 347/2013 of the European Parliament and of the Council <sup>(8)</sup>;</li> <li>— Those plans shall contain: <ul style="list-style-type: none"> <li>— a realistic and mature project pipeline for projects for which support from the ERDF is envisaged;</li> <li>— measures to achieve the objectives of social and economic cohesion and environmental protection, in line with Article 3(10) of Directive 2009/72/EC and Article 3(7) of Directive 2009/73/EC;</li> <li>— measures to optimise the use of energy and promote energy efficiency, in line with Article 3(11) of Directive 2009/72/EC and Article 3(8) of Directive 2009/73/EC.</li> </ul> </li> </ul>
<p>8. Promoting sustainable and quality employment and supporting labour mobility</p> <p>(Employment target)</p> <p>(referred to in point (8) of the first paragraph of Article 9)</p>	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Access to employment for job-seekers and inactive people, including the long-term unemployed and people far from the labour market, also through local employment initiatives and support for labour mobility.</li> </ul>	<p>8.1. Active labour market policies are designed and delivered in the light of the Employment guidelines.</p>	<ul style="list-style-type: none"> <li>— Employment services have the capacity to, and do, deliver: <ul style="list-style-type: none"> <li>— personalised services and active and preventive labour market measures at an early stage, which are open to all jobseekers while focusing on people at highest risk of social exclusion, including people from marginalised communities;</li> </ul> </li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— comprehensive and transparent information on new job vacancies and employment opportunities taking into account the changing needs of the labour market.</li> <li>— Employment services have set up formal or informal cooperation arrangements with relevant stakeholders.</li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Self employment, entrepreneurship and business creation including innovative micro, small and medium-sized enterprises.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Supporting the development of business incubators and investment support for self-employment, micro-enterprises and business creation.</li> </ul>	<p>8.2. Self-employment, entrepreneurship and business creation: the existence of a strategic policy framework for inclusive start-up.</p>	<ul style="list-style-type: none"> <li>— A strategic policy framework for inclusive start-up support is in place with the following elements: <ul style="list-style-type: none"> <li>— measures have been put in place with the objective of reducing the time and cost involved in setting up a business, taking account of the targets of the SBA;</li> <li>— measures have been put in place with the objective of reducing the time needed to get licenses and permits to take up and perform the specific activity of an enterprise, taking account of the targets of the SBA;</li> <li>— actions linking suitable business development services and financial services (access to capital), including reaching out to disadvantaged groups, areas, or both, where needed.</li> </ul> </li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Modernisation of labour market institutions, such as public and private employment services, and improving the matching of labour market needs, including through actions that enhance transnational labour mobility as well as through mobility schemes and better cooperation between institutions and relevant stakeholders.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in infrastructure for employment services.</li> </ul>	<p>8.3. Labour market institutions are modernised and strengthened in the light of the Employment Guidelines;</p> <p>Reforms of labour market institutions will be preceded by a clear strategic policy framework and ex ante assessment including with regard to the gender dimension</p>	<ul style="list-style-type: none"> <li>— Actions to reform employment services, aiming at providing them with the capacity to deliver: <ul style="list-style-type: none"> <li>— personalised services and active and preventive labour market measures at an early stage, which are open to all jobseekers while focusing on people at highest risk of social exclusion, including people from marginalised communities;</li> </ul> </li> <li>— comprehensive and transparent information on new job vacancies and employment opportunities taking into account the changing needs of the labour market.</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— Reform of employment services will include the creation of formal or informal cooperation networks with relevant stakeholders.</li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Active and healthy ageing.</li> </ul>	<p>8.4. Active and healthy ageing: Active ageing policies are designed in the light of the Employment Guidelines</p>	<ul style="list-style-type: none"> <li>— Relevant stakeholders are involved in the design and follow-up of active ageing policies with a view to retaining elderly workers on the labour market and promoting their employment;</li> <li>— A Member State has measures in place to promote active ageing.</li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Adaptation of workers, enterprises and entrepreneurs to change.</li> </ul>	<p>8.5. Adaptation of workers, enterprises and entrepreneurs to change: The existence of policies aimed at favouring anticipation and good management of change and restructuring.</p>	<ul style="list-style-type: none"> <li>— Instruments are in place to support social partners and public authorities to develop and monitor proactive approaches towards change and restructuring which include measures: <ul style="list-style-type: none"> <li>— to promote anticipation of change;</li> <li>— to promote the preparation and management of the restructuring process.</li> </ul> </li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Sustainable integration into the labour market of young people, in particular those not in employment, education or training, including young people at risk of social exclusion and young people from marginalised communities, including through the implementation of the Youth Guarantee.</li> </ul>	<p>8.6. The existence of a strategic policy framework for promoting youth employment including through the implementation of the Youth Guarantee.</p> <p>This ex ante conditionality applies only for implementation of the YEI</p>	<ul style="list-style-type: none"> <li>— A strategic policy framework for promoting youth employment is in place that: <ul style="list-style-type: none"> <li>— is based on evidence that measures the results for young people not in employment, education or training and that represents a base to develop targeted policies and monitor developments;</li> <li>— identifies the relevant public authority in charge of managing youth employment measures and coordinating partnerships across all levels and sectors;</li> <li>— involves stakeholders that are relevant for addressing youth unemployment;</li> <li>— allows early intervention and activation;</li> </ul> </li> </ul>



Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			<ul style="list-style-type: none"> <li>— comprises supportive measures for access to employment, enhancing skills, labour mobility and sustainable integration of young people not in employment, education or training into the labour market.</li> </ul>
<p>9. Promoting social inclusion, combating poverty and any discrimination</p> <p>(poverty target)</p> <p>(referred to in point (9) of the first paragraph of Article 9)</p>	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Active inclusion, including with a view to promoting equal opportunities and active participation, and improving employability.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services.</li> <li>— Providing support for physical, economic and social regeneration of deprived communities in urban and rural areas.</li> </ul>	<p>9.1. The existence and the implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of people excluded from the labour market in the light of the Employment guidelines.</p>	<ul style="list-style-type: none"> <li>— A national strategic policy framework for poverty reduction, aiming at active inclusion, is in place that:</li> <li>— provides a sufficient evidence base to develop policies for poverty reduction and monitor developments;</li> <li>— contains measures supporting the achievement of the national poverty and social exclusion target (as defined in the National Reform Programme), which includes the promotion of sustainable and quality employment opportunities for people at the highest risk of social exclusion, including people from marginalised communities;</li> <li>— involves relevant stakeholders in combating poverty;</li> <li>— depending on the identified needs, includes measures for the shift from institutional to community based care;</li> <li>— Upon request and where justified, relevant stakeholders will be provided with support for submitting project applications and for implementing and managing the selected projects.</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Socio-economic integration of marginalised communities such as the Roma.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services.</li> <li>— Providing support for physical, economic and social regeneration of deprived communities in urban and rural areas.</li> <li>— Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.</li> </ul>	<p>9.2. A national Roma inclusion strategic policy framework is in place</p>	<ul style="list-style-type: none"> <li>— A national Roma inclusion strategic policy framework is in place that: <ul style="list-style-type: none"> <li>— sets achievable national goals for Roma integration to bridge the gap with the general population. These targets should address the four EU Roma integration goals relating to access to education, employment, healthcare and housing;</li> <li>— identifies where relevant those disadvantaged micro-regions or segregated neighbourhoods, where communities are most deprived, using already available socio-economic and territorial indicators (i.e. very low educational level, long-term unemployment, etc);</li> <li>— includes strong monitoring methods to evaluate the impact of Roma integration actions and a review mechanism for the adaptation of the strategy;</li> <li>— is designed, implemented and monitored in close cooperation and continuous dialogue with Roma civil society, regional and local authorities.</li> </ul> </li> <li>— Upon request and where justified, relevant stakeholders will be provided with support for submitting project applications and for implementing and managing the selected projects.</li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Enhancing access to affordable, sustainable and high-quality services, including health care and social services of general interest.</li> </ul>	<p>9.3. Health: The existence of a national or regional strategic policy framework for health within the limits of Article 168 TFEU ensuring economic sustainability.</p>	<ul style="list-style-type: none"> <li>— A national or regional strategic policy framework for health is in place that contains: <ul style="list-style-type: none"> <li>— coordinated measures to improve access to health services;</li> </ul> </li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in health and social infrastructure which contributes to national, regional and local development, reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services.</li> </ul>		<ul style="list-style-type: none"> <li>— measures to stimulate efficiency in the health sector, through deployment of service delivery models and infrastructure;</li> <li>— a monitoring and review system.</li> <li>— A Member State or region has adopted a framework outlining available budgetary resources on an indicative basis and a cost-effective concentration of resources on prioritised needs for health care.</li> </ul>
<p>10. Investing in education, training and vocational training for skills and lifelong learning</p> <p>(Education target)</p> <p>(referred to in point (10) of the first paragraph of Article 9)</p>	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Reducing and preventing early school-leaving and promoting equal access to good quality early-childhood, primary and secondary education, including formal, non-formal and informal learning pathways for reintegrating into education and training.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.</li> </ul>	<p>10.1. Early school leaving: The existence of a strategic policy framework to reduce early school leaving (ESL) within the limits of Article 165 TFEU.</p>	<ul style="list-style-type: none"> <li>— A system for collecting and analysing data and information on ESL at relevant levels is in place that:</li> <li>— provides a sufficient evidence-base to develop targeted policies and monitors developments.</li> <li>— A strategic policy framework on ESL is in place that:</li> <li>— is based on evidence;</li> <li>— covers relevant educational sectors including early childhood development, targets in particular vulnerable groups that are most at risk of ESL including people from marginalised communities, and addresses prevention, intervention and compensation measures;</li> <li>— involves all policy sectors and stakeholders that are relevant to addressing ESL.</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Improving the quality and efficiency of, and access to, tertiary and equivalent education with a view to increasing participation and attainment levels, especially for disadvantaged groups.</li> </ul> <p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.</li> </ul>	<p>10.2. Higher education: the existence of a national or regional strategic policy framework for increasing tertiary education attainment, quality and efficiency within the limits of Article 165 TFEU.</p>	<ul style="list-style-type: none"> <li>— A national or regional strategic policy framework for tertiary education is in place with the following elements: <ul style="list-style-type: none"> <li>— where necessary, measures to increase participation and attainment that: <ul style="list-style-type: none"> <li>— increase higher education participation among low income groups and other under-represented groups with special regard to disadvantaged people, including people from marginalised communities;</li> <li>— reduce drop-out rates/improve completion rates;</li> <li>— encourage innovative content and programme design;</li> </ul> </li> <li>— measures to increase employability and entrepreneurship that: <ul style="list-style-type: none"> <li>— encourage the development of "transversal skills", including entrepreneurship in relevant higher education programmes;</li> <li>— reduce gender differences in terms of academic and vocational choices.</li> </ul> </li> </ul> </li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Enhancing equal access to lifelong learning for all age groups in formal, non-formal and informal settings, upgrading the knowledge, skills and competences of the workforce, and promoting flexible learning pathways including through career guidance and validation of acquired competences.</li> </ul>	<p>10.3. Lifelong learning (LL): The existence of a national and/or regional strategic policy framework for lifelong learning within the limits of Article 165 TFEU.</p>	<ul style="list-style-type: none"> <li>— A national or regional strategic policy framework for lifelong learning is in place that contains measures: <ul style="list-style-type: none"> <li>— to support the developing and linking services for LL, including their implementation and skills upgrading (i.e. validation, guidance, education and training) and providing for the involvement of, and partnership with relevant stakeholders;</li> </ul> </li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	<p>ERDF:</p> <ul style="list-style-type: none"> <li>— Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.</li> </ul>		<ul style="list-style-type: none"> <li>— for the provision of skills development for various target groups where these are identified as priorities in national or regional strategic policy frameworks (for example young people in vocational training, adults, parents returning to the labour market, low skilled and older workers, migrants and other disadvantaged groups, in particular people with disabilities);</li> <li>— to widen access to LL including through efforts to effectively implement transparency tools (for example the European Qualifications Framework, National Qualifications Framework, European Credit system for Vocational Education and Training, European Quality Assurance in Vocational Education and Training);</li> <li>— to improve the labour market relevance of education and training and to adapt it to the needs of identified target groups (for example young people in vocational training, adults, parents returning to the labour market, low-skilled and older workers, migrants and other disadvantaged groups, in particular people with disabilities).</li> </ul>
	<p>ESF:</p> <ul style="list-style-type: none"> <li>— Improving the labour market relevance of education and training systems, facilitating the transition from education to work, and strengthening vocational education and training (VET) systems and their quality, including through mechanisms for skills anticipation, adaptation of curricula and the establishment and development of work-based learning systems, including dual learning systems and apprenticeship schemes.</li> </ul>	<p>10.4. The existence of a national or regional strategic policy framework for increasing the quality and efficiency of VET systems within the limits of Article 165 TFEU.</p>	<ul style="list-style-type: none"> <li>— A national or regional strategic policy framework is in place for increasing the quality and efficiency of VET systems within the limits of Article 165 TFEU which includes measures for the following:</li> </ul>

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	ERDF:  — Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure		— to improve the labour market relevance of VET systems in close cooperation with relevant stakeholders including through mechanisms for skills anticipation, adaptation of curricula and the strengthening of work-based learning provision in its different forms;  — to increase the quality and attractiveness of VET including through establishing a national approach for quality assurance for VET (for example in line with the European Quality Assurance Reference Framework for Vocational Education and Training) and implementing the transparency and recognition tools, for example European Credit system for Vocational Education and Training (ECVET).
11. Enhancing institutional capacity of public authorities and stakeholders and efficient public administration  (referred to in point (11) of the first paragraph of Article 9)	ESF:  — Investment in institutional capacity and in the efficiency of public administrations and public services at the national, regional and local levels with a view to reforms, better regulation and good governance.  ERDF:  — Enhancing institutional capacity of public authorities and stakeholders and efficient public administration through actions to strengthen the institutional capacity and the efficiency of public administrations and public services related to the implementation of the ERDF, and in support of actions under the ESF to strengthen the institutional capacity and the efficiency of public administration.	— The existence of a strategic policy framework for reinforcing the Member States' administrative efficiency including public administration reform	— A strategic policy framework for reinforcing a Member State's public authorities' administrative efficiency and their skills with the following elements are in place and in the process of being implemented:  — an analysis and strategic planning of legal, organisational and/or procedural reform actions;  — the development of quality management systems;  — integrated actions for simplification and rationalisation of administrative procedures;  — the development and implementation of human resources strategies and policies covering the main gaps identified in this field;  — the development of skills at all levels of the professional hierarchy within public authorities;

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	Cohesion Fund:  — Enhancing institutional capacity of public authorities and stakeholders and efficient public administration through actions to strengthen the institutional capacity and the efficiency of public administrations and public services related to the implementation of the Cohesion Fund.		— the development of procedures and tools for monitoring and evaluation.

- (<sup>1</sup>) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).
- (<sup>2</sup>) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).
- (<sup>3</sup>) Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (OJ L 114, 27.4.2006, p. 64).
- (<sup>4</sup>) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).
- (<sup>5</sup>) Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).
- (<sup>6</sup>) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15).
- (<sup>7</sup>) Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).
- (<sup>8</sup>) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

## PART II: General ex ante conditionalities

Area	Ex ante conditionality	Criteria for fulfilment
1. Anti-discrimination	The existence of administrative capacity for the implementation and application of Union anti-discrimination law and policy in the field of ESI Funds	— Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes, including the provision of advice on equality in ESI fund-related activities;  — Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the fields of Union anti-discrimination law and policy.
2. Gender	The existence of administrative capacity for the implementation and application of Union gender equality law and policy in the field of ESI Funds	— Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for gender equality throughout the preparation and implementation of programmes, including the provision of advice on gender equality in ESI Fund-related activities;  — Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the fields of Union gender equality law and policy as well as on gender mainstreaming.

Area	Ex ante conditionality	Criteria for fulfilment
3. Disability	The existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in the field of ESI Funds in accordance with Council Decision 2010/48/EC <sup>(1)</sup>	<ul style="list-style-type: none"> <li>— Arrangements in accordance with the institutional and legal framework of Member States for the consultation and involvement of bodies in charge of protection of rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes;</li> <li>— Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the fields of applicable Union and national disability law and policy, including accessibility and the practical application of the UNCRPD as reflected in Union and national legislation, as appropriate;</li> <li>— Arrangements to ensure monitoring of the implementation of Article 9 of the UNCRPD in relation to the ESI Funds throughout the preparation and the implementation of the programmes.</li> </ul>
4. Public procurement	The existence of arrangements for the effective application of Union public procurement law in the field of the ESI Funds.	<ul style="list-style-type: none"> <li>— Arrangements for the effective application of Union public procurement rules through appropriate mechanisms;</li> <li>— Arrangements which ensure transparent contract award procedures;</li> <li>— Arrangements for training and dissemination of information for staff involved in the implementation of the ESI funds;</li> <li>— Arrangements to ensure administrative capacity for implementation and application of Union public procurement rules.</li> </ul>
5. State aid	The existence of arrangements for the effective application of Union State aid rules in the field of the ESI Funds.	<ul style="list-style-type: none"> <li>— Arrangements for the effective application of Union State aid rules;</li> <li>— Arrangements for training and dissemination of information for staff involved in the implementation of the ESI funds;</li> <li>— Arrangements to ensure administrative capacity for implementation and application of Union State aid rules.</li> </ul>
6. Environmental legislation relating to Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)	The existence of arrangements for the effective application of Union environmental legislation related to EIA and SEA.	<ul style="list-style-type: none"> <li>— Arrangements for the effective application of Directive 2011/92/EU of the European Parliament and of the Council <sup>(2)</sup> (EIA) and of Directive 2001/42/EC of the European Parliament and of the Council <sup>(3)</sup> (SEA);</li> <li>— Arrangements for training and dissemination of information for staff involved in the implementation of the EIA and SEA Directives;</li> <li>— Arrangements to ensure sufficient administrative capacity.</li> </ul>



Area	Ex ante conditionality	Criteria for fulfilment
7. Statistical systems and result indicators	<p>The existence of a statistical basis necessary to undertake evaluations to assess the effectiveness and impact of the programmes.</p> <p>The existence of a system of result indicators necessary to select actions, which most effectively contribute to desired results, to monitor progress towards results and to undertake impact evaluation.</p>	<ul style="list-style-type: none"> <li>— Arrangements for timely collection and aggregation of statistical data with the following elements are in place: <ul style="list-style-type: none"> <li>— the identification of sources and mechanisms to ensure statistical validation;</li> <li>— arrangements for publication and public availability of aggregated data;</li> </ul> </li> <li>— An effective system of result indicators including: <ul style="list-style-type: none"> <li>— the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme;</li> <li>— the establishment of targets for these indicators;</li> <li>— the consistency of each indicator with the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data;</li> </ul> </li> <li>— Procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators.</li> </ul>

(<sup>1</sup>) Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, (OJ L 23, 27.1.2010, p. 35)

(<sup>2</sup>) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

(<sup>3</sup>) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

## ANNEX XII

**INFORMATION AND COMMUNICATION ON SUPPORT FROM THE FUNDS**

## 1. LIST OF OPERATIONS

The list of operations referred to in Article 115(2) shall contain, in at least one of the official languages of the Member State, the following data fields:

- beneficiary name (only of legal entities; no natural persons shall be named);
- operation name;
- operation summary;
- operation start date;
- operation end date (expected date for physical completion or full implementation of the operation);
- total eligible expenditure allocated to the operation;
- Union co-financing rate, as per priority axis;
- operation postcode; or other appropriate location indicator;
- country;
- name of category of intervention for the operation in accordance with point (b) (vi) of the first subparagraph of Article 96(2);
- date of last update of the list of operations.

The headings of the data fields shall be also provided in at least one other official language of the Union.

## 2. INFORMATION AND COMMUNICATION MEASURES FOR THE PUBLIC

The Member State, the managing authority and the beneficiaries shall take the steps necessary to provide information to, and communicate with, the public on operations supported by an operational programme in accordance with this Regulation.

## 2.1. Responsibilities of the Member State and the managing authority

1. The Member State and the managing authority shall ensure that the information and communication measures are implemented in accordance with the communication strategy and that those measures aim for the widest possible media coverage using various forms and methods of communication at the appropriate level.
2. The Member State or the managing authority shall be responsible for at least the following information and communication measures:
  - (a) organising a major information activity publicising the launch of the operational programme or programmes, even prior to the approval of the relevant communication strategies;
  - (b) organising one major information activity a year which promotes the funding opportunities and the strategies pursued and presents the achievements of the operational programme or programmes, including, where relevant, major projects, joint action plans and other project examples;
  - (c) displaying the Union emblem at the premises of each managing authority;

- (d) publishing electronically the list of operations in accordance with Section 1 of this Annex;
  - (e) giving examples of operations, by operational programme, on the single website or on the operational programme's website that is accessible through the single website portal; the examples should be in a widely spoken official language of the Union other than the official language or languages of the Member State concerned;
  - (f) updating information about the operational programme's implementation, including, when appropriate, its main achievements, on the single website or on the operational programme's website that is accessible through the single website portal.
3. The managing authority shall involve in information and communication measures, in accordance with national laws and practices, the following bodies where appropriate:
- (a) the partners referred to in Article 5;
  - (b) information centres on Europe, as well as Commission representation offices, and information offices of the European Parliament in the Member States;
  - (c) educational and research institutions.

These bodies shall widely disseminate the information described in Article 115(1).

## 2.2. Responsibilities of the beneficiaries

1. All information and communication measures provided by the beneficiary shall acknowledge support from the Funds to the operation by displaying:
- (a) the Union emblem in accordance with the technical characteristics laid down in the implementing act adopted by the Commission under Article 115(4), together with a reference to the Union;
  - (b) a reference to the Fund or Funds supporting the operation.
- Where an information or communication measure relates to an operation or to several operations co-financed by more than one Fund, the reference provided for in point (b) may be replaced by a reference to the ESI Funds.
2. During implementation of an operation, the beneficiary shall inform the public about the support obtained from the Funds by:
- (a) providing on the beneficiary's website, where such a website exists, a short description of the operation, proportionate to the level of support, including its aims and results, and highlighting the financial support from the Union;
  - (b) placing, for operations not falling under points 4 and 5, at least one poster with information about the project (minimum size A3), including the financial support from the Union, at a location readily visible to the public, such as the entrance area of a building.
3. For operations supported by the ESF, and in appropriate cases for operations supported by the ERDF or Cohesion Fund, the beneficiary shall ensure that those taking part in an operation have been informed of this funding.

Any document, relating to the implementation of an operation which is used for the public or for participants, including any attendance or other certificate, shall include a statement to the effect that the operational programme was supported by the Fund or Funds.

4. During implementation of an ERDF or Cohesion Fund operation, the beneficiary shall put up, at a location readily visible to the public, a temporary billboard of a significant size for each operation consisting of the financing of infrastructure or construction operations for which the total public support to the operation exceeds EUR 500 000.

5. No later than three months after completion of an operation, the beneficiary shall put up a permanent plaque or billboard of significant size at a location readily visible to the public for each operation that fulfils the following criteria:

- (a) the total public support to the operation exceeds EUR 500 000;
- (b) the operation consists of the purchase of a physical object or of the financing of infrastructure or of construction operations.

The plaque or billboard shall state the name and the main objective of the operation. It shall be prepared in accordance with the technical characteristics adopted by the Commission in accordance with Article 115(4).

### 3. INFORMATION MEASURES FOR POTENTIAL BENEFICIARIES AND BENEFICIARIES

#### 3.1. Information measures for potential beneficiaries

1. The managing authority shall ensure, in accordance with the communication strategy, that the operational programme's strategy and objectives, and the funding opportunities offered through joint support from the Union and the Member State, are disseminated widely to potential beneficiaries and all interested parties, with details of the financial support from the Funds concerned.
2. The managing authority shall ensure that potential beneficiaries have access to the relevant information, including updated information where necessary, and taking into account the accessibility of electronic or other communication services for certain potential beneficiaries, on at least the following:
  - (a) the funding opportunities and the launching of application calls;
  - (b) the eligibility of expenditure conditions to be met in order to qualify for support under an operational programme;
  - (c) a description of the procedures for examining applications for funding and of the time periods involved;
  - (d) the criteria for selecting the operations to be supported;
  - (e) the contacts at national, regional or local level that are able to provide information on the operational programmes;
  - (f) the responsibility of potential beneficiaries to inform the public about the aim of the operation and the support from the Funds to the operation in accordance with point 2.2. The managing authority may request potential beneficiaries to propose indicative communication activities, proportional to the size of the operation, in the applications.

#### 3.2. Information measures for beneficiaries

1. The managing authority shall inform beneficiaries that acceptance of funding constitutes an acceptance of their inclusion in the list of operations published in accordance with Article 115(2).
2. The managing authority shall provide information and communication tools, including templates in electronic format, to help beneficiaries to meet their obligations set out in point 2.2, where appropriate.

### 4. ELEMENTS OF THE COMMUNICATION STRATEGY

The communication strategy drawn up by the managing authority and, where appropriate, by the Member State shall include the following elements:

- (a) a description of the approach taken, including the main information and communication measures to be taken by the Member State or the managing authority and aimed at potential beneficiaries, beneficiaries, multipliers and the wider public, having regard to the aims described in Article 115;
- (b) a description of materials that will be made available in formats accessible for people with disabilities;
- (c) a description of how beneficiaries will be supported in their communication activities;
- (d) the indicative budget for implementation of the strategy;

- (e) a description of the administrative bodies, including the staff resources, responsible for implementing the information and communication measures;
  - (f) the arrangements for the information and communication measures referred to in point 2, including the website or website portal at which such data may be found;
  - (g) an indication of how the information and communication measures shall be assessed in terms of visibility and awareness of policy, operational programmes and operations, and of the role played by the Funds and the Union;
  - (h) where appropriate, a description of the use of the main results of the previous operational programme;
  - (i) an annual update setting out the information and communication activities to be carried out in the following year.
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## ANNEX XIII

**DESIGNATION CRITERIA FOR THE MANAGING AUTHORITY AND THE CERTIFYING AUTHORITY**

## 1. INTERNAL CONTROL ENVIRONMENT

- (i) Existence of an organisational structure covering the functions of managing and certifying authorities and the allocation of functions within each of those authorities, ensuring that the principle of separation of functions, where appropriate, is respected.
- (ii) Framework for ensuring, in the event of delegation of tasks to intermediate bodies, the definition of their respective responsibilities and obligations, the verification of their capacities to carry out delegated tasks and the existence of reporting procedures.
- (iii) Reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid.
- (iv) Plan for allocation of appropriate human resources with necessary technical skills, at different levels and for different functions in the organisation.

## 2. RISK MANAGEMENT

Taking into account the principle of proportionality, a framework for ensuring that an appropriate risk management exercise is conducted when necessary, and in particular, in the event of major modifications to the activities.

## 3. MANAGEMENT AND CONTROL ACTIVITIES

## A. Managing authority

- (i) Procedures regarding grant applications, appraisal of applications, selection for funding, including instructions and guidance ensuring the contribution of operations, in accordance with point (a)(i) of Article 125(3), to achieving the specific objectives and results of the relevant priority.
- (ii) Procedures for management verifications including administrative verifications in respect of each application for reimbursement by beneficiaries and the on-the-spot verifications of operations.
- (iii) Procedures for treatment of applications for reimbursement by beneficiaries and authorisation of payments.
- (iv) Procedures for a system to collect, record and store in computerised form data on each operation, including, where appropriate, data on individual participants and a breakdown of data on indicators by gender where required, and to ensure that systems security is in line with internationally accepted standards.
- (v) Procedures established by the managing authority to ensure that beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation.
- (vi) Procedures for putting in place effective and proportionate anti-fraud measures.
- (vii) Procedures to ensure an adequate audit trail and archiving system.
- (viii) Procedures to draw up the management declaration of assurance, report on the controls carried out and weaknesses identified, and the annual summary of final audits and controls.
- (ix) Procedures to ensure the provision to the beneficiary of a document setting out the conditions for support for each operation.

B. Certifying authority

- (i) Procedures for certifying interim payment applications to the Commission.
- (ii) Procedures for drawing up the accounts and certifying that they are true, complete and accurate and that the expenditure complies with applicable law taking into account the results of all audits.
- (iii) Procedures for ensuring an adequate audit trail by maintaining accounting records including amounts recoverable, recovered and withdrawn for each operation, in computerised form.
- (iv) Procedures, where appropriate, to ensure that the certifying authority receives adequate information from the managing authority on the verifications carried out, and the results of the audits carried out by or under the responsibility of the audit authority.

4. MONITORING

A. Managing authority

- (i) Procedures to support the work of the monitoring committee.
- (ii) Procedures to draw up and submit to the Commission annual and final implementation reports.

B. Certifying authority

Procedures on the fulfilment of the responsibilities of the certifying authority for monitoring the results of the management verifications and the results of the audits carried out by or under the responsibility of the audit authority before submitting payment applications to the Commission.

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## ANNEX XIV

## CORRELATION TABLE

Regulation (EC) No 1083/2006	This Regulation
Article 1	Article 1
Article 2	Article 2
Articles 3 and 4	Article 89
Articles 5, 6 and 8	Article 90
Article 7	—
Article 9	Articles 4 and 6
Article 10	Article 4(1)
Article 11	Article 5
Article 12	Article 4(4)
Article 13	Article 4(5)
Article 14	Articles 4(7) and (8) and 73
Article 15	Article 95
Article 16	Article 7
Article 17	Article 8
Article 18	Article 91
Articles 19 to 21	Article 92
Article 22	Articles 93 and 94
Article 23	Article 92(6)
Article 24	Article 91(3)
Article 25	Articles 10 and 11
Article 26	Article 12
Article 27	Article 15
Article 28	Articles 14 and 16
Article 29	Article 52
Article 30	Article 53
Article 31	Article 113
Article 32	Articles 26, 29 and 96(9) and (10)
Article 33	Articles 30 and 96(11)
Article 34	Article 98
Article 35	Article 99
Article 36	Article 31
Article 37	Articles 27 and 96(1) to (8)
Article 38	—



Regulation (EC) No 1083/2006	This Regulation
Article 39	Article 100
Article 40	Article 101
Article 41	Articles 102 and 103
Article 42	Article 123(7)
Article 43	—
Article 43a	Article 67
Article 43b	Article 67
Article 44	Articles 37 to 46
Article 45	Articles 58 and 118
Article 46	Articles 59 and 119
Article 47	Article 54
Article 48	Articles 55, 56(1) to (3), 57 and 114(1) and (2)
Article 49	Articles 56(4), 57 and 114(3)
Article 50	Articles 20 to 22
Article 51	—
Article 52	Article 121
Articles 53 and 54	Articles 60 and 120
Article 55	Article 61
Article 56	Articles 65 to 70
Article 57	Article 71
Article 58	Article 73
Article 59	Article 123
Article 60	Article 125
Article 61	Article 126
Article 62	Article 127
Article 63	Article 47
Article 64	Article 48
Article 65	Article 110
Article 66	Article 49
Article 67	Articles 50 and 111
Article 68	Articles 51 and 112
Article 69	Articles 115 to 117
Article 70	Articles 74 and 122
Article 71	Article 124
Article 72	Article 75

Regulation (EC) No 1083/2006	This Regulation
Article 73	Article 128
Article 74	Article 148
Article 75	Article 76
Article 76	Articles 77 and 129
Article 77	Articles 78 and 130
Articles 78 and 78a	Article 131
Article 79	—
Article 80	Article 132
Article 81	Articles 80 and 133
Article 82	Articles 81 and 134
Article 83	—
Article 84	Article 82
Articles 85 to 87	Article 135
Article 88	—
Article 89	Article 141
Article 90	Article 140
Article 91	Article 83
Article 92	Article 142
Article 93	Articles 86 and 136
Article 94	—
Article 95	—
Article 96	Article 87
Article 97	Article 88
Article 98	Article 143
Article 99	Articles 85 and 144
Article 100	Article 145
Article 101	Article 146
Article 102	Article 147
Articles 103 and 104	Article 150
Article 105	Article 152
Article 105a	—
Article 106	Article 151
Article 107	Article 153
Article 108	Article 154

**Joint Statement by the Council and the Commission on Article 67**

The Council and the Commission agree that Article 67 (4) which excludes the application of simplified costs set out in Article 67 (1) (b)-(d) in cases where an operation or a project forming part of an operation is implemented exclusively through public procurement procedures does not preclude the implementation of an operation through public procurement procedures which result in payments by the beneficiary to the contractor based on pre-defined unit costs. The Council and the Commission agree that the costs determined and paid by the beneficiary based on these unit costs established through public procurement procedures shall constitute real costs actually incurred and paid by the beneficiary under Article 67 (1) (a).

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**Joint Statement by the European Parliament, the Council and the Commission on the revision of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council linked with the reconstitution of appropriations**

The European Parliament, the Council and the Commission agree to include in the revision of the Financial Regulation, aligning Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council to the Multiannual Financial Framework 2014-20, provisions necessary for the application of the arrangements for the allocation of the performance reserve and in relation to the implementation of financial instruments under Article 39 (SME initiative) under the Regulation laying down common provisions for the European Structural and Investment Funds concerning the reconstitution of:

- i. appropriations which had been committed to programmes in relation to the performance reserve and which had to be decommitted as a result of priorities under these programmes not having attained their milestones and;
  - ii. appropriations which had been committed in relation to dedicated programmes referred to under Article 39(4)b and which had to be de-committed because the participation of a Member State in the financial instrument had to be discontinued.
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**Joint Statement by the European Parliament, the Council and the Commission on Article 1**

If further justified derogations to the common rules are needed to take into account specificities of the EMFF and of the EAFRD, the European Parliament, the Council and the European Commission commit to allow for these derogations by proceeding with due diligence to the necessary modifications to Regulation laying down common provisions for the European Structural and Investment Funds.

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**Joint Statement by the European Parliament and the Council on the exclusion of any retroactivity with regard to the application of article 5(3)**

The European Parliament and the Council agree that:

- concerning the application of Articles 14(2), 15(1)(c), and 26 (2) of Regulation laying down common provisions for the European Structural and Investment Funds, the actions taken by the Member States to involve the partners referred to in Article 5(1) in the preparation of the Partnership Agreement and the programmes referred to in Article 5 (2) include all actions taken on a practical level by the Member States irrespective of their timing as well as actions taken by them before the entry into force of that and before the day of the entry into force of the delegated act for a European code of conduct adopted in accordance with Article 5(3) of the same Regulation, during the preparatory phases of a Member State programming procedure, provided that the objectives of the partnership principle, laid down in that Regulation, are achieved. In this context, Member States, in accordance with their national and regional competences, will decide on the content of both, the proposed Partnership Agreement and proposed draft programmes, in accordance with the relevant provisions of that Regulation and the fund specific rules;
  - the delegated act laying down a European code of conduct, adopted in accordance with Article 5(3), will under no circumstances and neither directly nor indirectly have any retroactive effect, especially concerning the approval procedure of the Partnership Agreement and the programmes, since it is not the intention of the EU legislature to confer any powers on the Commission to the effect that it could reject the approval of the Partnership Agreement and programmes solely and exclusively based on any kind of non-compliance with the European code of conduct, adopted in accordance with Article 5(3);
  - the European Parliament and the Council invite the Commission to make available for them the draft text of the delegated act to be adopted under article 5(3) as early as possible, but not later than the date when the political agreement on the Regulation laying down common provisions for the European Structural and Investment Funds is adopted by the Council or the date when the draft report on that Regulation is voted at the plenary of the European Parliament, whichever date is the earliest.
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