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►B 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

(OJ L 347, 20.12.2013, p. 320)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EU) 2015/1839 of the European Parliament and of the Council of 14 October 2015	L 270	1	15.10.2015
►M2	Regulation (EU) 2016/2135 of the European Parliament and of the Council of 23 November 2016	L 338	34	13.12.2016
►M3	Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017	L 129	1	19.5.2017
►M4	Regulation (EU) 2017/1199 of the European Parliament and of the Council of 4 July 2017	L 176	1	7.7.2017
►M5	Regulation (EU) 2017/2305 of the European Parliament and of the Council of 12 December 2017	L 335	1	15.12.2017
►M6	Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018	L 193	1	30.7.2018
►M7	Regulation (EU) 2018/1719 of the European Parliament and of the Council of 14 November 2018	L 291	5	16.11.2018
►M8	Regulation (EU) 2019/711 of the European Parliament and of the Council of 17 April 2019	L 123	1	10.5.2019
►M9	Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020	L 99	5	31.3.2020
►M10	Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020	L 130	1	24.4.2020
►M11	Regulation (EU) 2020/1041 of the European Parliament and of the Council of 15 July 2020	L 231	4	17.7.2020
►M12	Regulation (EU) 2020/1542 of the European Parliament and of the Council of 21 October 2020	L 356	1	26.10.2020
►M13	Regulation (EU) 2020/2221 of the European Parliament and of the Council of 23 December 2020	L 437	30	28.12.2020
►M14	Regulation (EU) 2022/562 of the European Parliament and of the Council of 6 April 2022	L 109	1	8.4.2022
►M15	Regulation (EU) 2022/613 of the European Parliament and of the Council of 12 April 2022	L 115	38	13.4.2022
►M16	Regulation (EU) 2022/2039 of the European Parliament and of the Council of 19 October 2022	L 275	23	25.10.2022

►**M17**	Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023	L 63	1	28.2.2023
►**M18**	Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024	L 795	1	29.2.2024

Corrected by:

►**C1**	Corrigendum, OJ L 200, 26.7.2016, p. 140 (1303/2013)			

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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

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 [1] 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');

[1] 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).

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(4) Regulation (EU) No 1299/2013 (the 'ETC Regulation');

(5) Regulation (EU) No 1305/2013 (the 'EAFRD Regulation'); and

(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 ESI Funds, 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 ([1]) and in Council Decision 2010/707/EU ([2]), 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

([1]) 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).

([2]) 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).

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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;

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(10) 'beneficiary' means a public or private body or a natural person, responsible for initiating or both initiating and implementing operations, and:

(a) in the context of State aid, the body which receives the aid, except where the aid per undertaking is less than EUR 200 000, in which case the Member State concerned may

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decide that the beneficiary is the body granting the aid, without prejudice to Commission Regulations (EU) No 1407/2013 ([1]), (EU) No 1408/2013 ([2]) and (EU) No 717/2014 ([3]); and

(b) in the context of financial instruments under Title IV of Part Two of this Regulation, the body that implements the financial instrument or the fund of funds as appropriate;

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(11) 'financial instruments' means financial instruments as defined in the Financial Regulation, save where otherwise provided in this Regulation;

(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 ([4]), Commission Regulation (EC) No 1535/2007 ([5]) and Commission Regulation (EC) No 875/2007 ([6]);

(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;

([1]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

([2]) Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).

([3]) Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

([4]) 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).

([5]) 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).

([6]) 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).

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(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 [1] 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 [2], 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);

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(22) 'payment application' means a payment application or declaration of expenditure submitted by the Member State to the Commission;

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(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;

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[1] 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).

[2] 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).

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►C1 (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 in the case of a financial instrument, or during the eligibility period and/or after the eligibility period in the case of a PPP operation, 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;

(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 ([1]);

(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;

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(31) 'macroregional strategy' means an integrated framework agreed by the Council and, where appropriate, 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;

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(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

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

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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

►C1 Where, pursuant to Articles 16(2) and (4), 29(4), 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.

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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 ►M6 Article 63 of the Financial Regulation ◄, with the exception of

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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.

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8. The Commission and the Member States shall respect the principle of sound financial management in accordance with Article 33, Article 36(1) and Article 61 of the Financial Regulation.

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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;

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(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.

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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.

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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.

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The priorities established for each of the ESI Funds in the Fund-specific rules shall in particular cover the appropriate use of each ESI Fund in the areas of migration and asylum. In that context, coordination with the Asylum, Migration and Integration Fund established by Regulation (EU) No 516/2014 of the European Parliament and of the Council ([1]) shall be ensured, where appropriate.

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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;

([1]) Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).

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(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 co-operation 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.

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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;

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(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;

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(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.

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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.

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4a. Where applicable, the Member State shall submit each year by 31 January an amended Partnership Agreement following the approval of amendments to one or more programmes by the Commission in the preceding calendar year.

The Commission shall adopt each year by 31 March a decision confirming that the amendments to the Partnership Agreement reflect one or more programme amendments approved by the Commission in the preceding calendar year.

That decision may include the amendment of other elements of the Partnership Agreement pursuant to a proposal referred to in paragraph 4, provided that the proposal is submitted to the Commission by 31 December of the preceding calendar year.

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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.

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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

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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;

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(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.

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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.

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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 ([1]) 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:

([1]) Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macro-economic imbalances (OJ L 306, 23.11.2011, p. 25).

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(i) Union financial assistance is made available to it under Council Regulation (EU) No 407/2010 ([1]);

(ii) financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002 ([2]);

(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 ([3]) or that triggers a decision of the Council in accordance with Article 136(1) TFEU.

►C1 For the purposes of point (c) 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.

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 ►C1 not later than three months after their submission by the Member State in accordance with paragraph 4. ◄

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

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

([2]) 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).

([3]) 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).

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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. ►C1 That implementing act shall only apply with respect to payment applications 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;

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(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. ►C1 The suspension of payments shall apply to payment applications 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.

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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 ([1]) or the Council has decided in accordance with Article 126(12) TFEU to abrogate the decision on the existence of an excessive deficit;

(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;

([1]) 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

(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.

▼M2

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.

▼M2

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 payment applications for the period until 30 June 2016:

(a) where the Member State concerned receives a loan from the Union under 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 macroeconomic 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.

If a Member State meets one of the conditions set out in the second subparagraph after 30 June 2016, the increased rate shall apply to its payment applications for the period until 30 June of the year following the calendar year in which the related financial assistance comes to an end.

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:

(a) the public expenditure; or

(b) 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,

whichever is lower.

▼B

Article 25

▼M3

Management of technical assistance for Member States

1. On the request of a Member State pursuant to Article 11 of Regulation (EU) 2017/825 of the European Parliament and the Council ([1]), a part of the resources provided for under Article 59 of this Regulation 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 (l) of the third subparagraph of Article 58(1) of this Regulation through direct or indirect management.

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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

([1]) Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013 (OJ L 129, 19.5.2017, p. 1).

▼B

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. ►M3 A Member State shall request the transfer referred to in paragraph 1 for a calendar year 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.

▼M3

4. Resources transferred by a Member State in accordance with paragraph 1 of this Article shall be subject to the decommitment rule set out in Article 136 of this Regulation and Article 38 of Regulation (EU) No 1306/2013.

▼M10

CHAPTER V

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

Article 25a

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

1. By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), at the request of a Member State, a co-financing rate of 100 % may be applied to expenditure declared in payment applications during the accounting year starting 1 July 2020 and ending 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

Requests for modification of the co-financing rate shall be submitted in accordance with the procedure for the amendment of programmes set out in Article 30 and shall be accompanied by a revised programme or programmes. The co-financing rate of 100 % shall apply only if the relevant amendment of the operational programme is approved by the Commission before the submission of the final application for an interim payment in accordance with Article 135(2).

Before submitting the first payment application for the accounting year starting 1 July 2021, Member States shall notify the table referred to in point (d)(ii) of Article 96(2) confirming the co-financing rate which was applicable during the accounting year ending 30 June 2020 for the priorities concerned by the temporary increase to 100 %.

▼M14

1a. By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), a co-financing rate of 100 % may be applied to expenditure declared in payment applications for the accounting year starting 1 July 2021 and ending 30 June 2022 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

By way of derogation from Article 30(1) and (2) and Article 96(10), the application of the co-financing rate of 100 % shall not require a Commission decision approving a programme amendment. The Member State shall notify the revised financial tables to the Commission following approval by the monitoring committee. The co-financing rate of 100 % shall apply only if the financial tables are notified to the Commission before the submission of the final application for an interim payment for the accounting year starting 1 July 2021 and ending 30 June 2022 in accordance with Article 135(2).

The total additional payments resulting from the application of the 100 % co-financing rate shall not exceed EUR 5 000 000 000 in 2022 and EUR 1 000 000 000 in 2023.

The Commission shall make interim payments by applying the co-financing rate applicable to the priority axes concerned before the notification referred to in the second subparagraph. By way of derogation from Article 135(5), the Commission shall pay the additional amounts resulting from the application of the 100 % co-financing rate following receipt of all final applications for interim payment for the accounting year 2021/2022, where necessary on a pro-rata basis to respect the ceilings set out in the third subparagraph.

By way of derogation from Article 139(7), remaining amounts resulting from the application of the 100 % co-financing rate which, in order to respect the ceilings set out in the third subparagraph, cannot be paid following the acceptance of the accounts, shall be paid in 2024 or later.

▼M18

1b. By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), a co-financing rate of 100 % may be applied to expenditure declared in payment applications for the entire accounting year starting on 1 July 2023 and ending on 30 June 2024 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

By way of derogation from Article 30(1) and (2) and Article 96(10), the application of the co-financing rate of 100 % shall not require a Commission decision approving a programme amendment. The Member State shall notify the revised financial tables to the Commission following approval by the monitoring committee. The co-financing rate of 100 % shall apply only if the financial tables are notified to the Commission before the submission of the final application for an interim payment for the last accounting year starting on 1 July 2023 and ending on 30 June 2024 in accordance with Article 135(2).

▼M10

2. In response to the COVID-19 outbreak, the resources available for programming for the year 2020 for the Investment for growth and jobs goal may, at the request of a Member State, be transferred between the ERDF, the ESF and the Cohesion Fund, irrespective of the percentages referred to in points (a) to (d) of Article 92(1).

▼**M10**

For the purpose of those transfers, the requirements laid down in Article 92(4) shall not apply.

Transfers shall not affect resources allocated to the YEI in accordance with Article 92(5) or to the aid for the most deprived under the Investment for growth and jobs goal in accordance with Article 92(7).

Resources transferred between the ERDF, the ESF and the Cohesion Fund under this paragraph shall be implemented in accordance with the rules of the Fund to which the resources are transferred.

3. By way of derogation from Article 93(1) and in addition to the possibility provided for in Article 93(2), resources available for programming for the year 2020 may, at the request of a Member State, be transferred between categories of regions in response to the COVID-19 outbreak.

4. Requests for transfers under paragraphs 2 and 3 of this Article shall be submitted in accordance with the procedure for amendment of programmes set out in Article 30, shall be duly justified and shall be accompanied by the revised programme or programmes identifying the amounts transferred by Fund and by category of region, where relevant.

5. By way of derogation from Article 18 of this Regulation and the Fund-specific Regulations, financial allocations set out in requests for programme amendments submitted or transfers notified pursuant to Article 30(5) of this Regulation, on or after 24 April 2020, shall not be subject to the requirements on thematic concentration set out in this Regulation or the Fund-specific Regulations.

6. By way of derogation from Article 16, as from 24 April 2020, Partnership Agreements shall not be amended and programme amendments shall not entail the amendment of Partnership Agreements.

By way of derogation from Articles 26(1), 27(1), 30(1) and 30(2), as from 24 April 2020 the consistency of programmes and of their implementation with the Partnership Agreement shall not be verified.

7. For operations that foster crisis response capacities in the context of the COVID-19 outbreak as referred to in the second subparagraph of Article 65(10), Article 65(6) shall not apply.

By way of derogation from point (b) of Article 125(3), such operations may be selected for support by the ERDF or the ESF prior to the approval of the amended programme.

8. For the purposes of point (b) of Article 87(1), where the COVID-19 outbreak is invoked as a reason of *force majeure*, information on the amounts for which it has not been possible to make a payment application shall be provided at an aggregate level by priority for operations whose total eligible cost is less than EUR 1 000 000.

9. The annual report on implementation of the programme referred to in Article 50(1) for the year 2019 shall be submitted by 30 September 2020 for all ESI Funds, by way of derogation from the deadlines set out in the Fund-specific Regulations. The transmission of the summary report to be prepared by the Commission in 2020, in accordance with Article 53(1), may be postponed accordingly.

▼**M10**

10. By way of derogation from point (g) of Article 37(2), no review or update of the *ex ante* assessments shall be required where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak.

11. Where financial instruments provide support in the form of working capital to SMEs pursuant to the second subparagraph of Article 37(4) of this Regulation, new or updated business plans, or equivalent documents, and evidence allowing verification that the support provided through the financial instruments has been used for its intended purpose as part of the supporting documents, shall not be required.

By way of derogation from Regulation (EU) No 1305/2013, such support may also be provided by the EAFRD under measures referred to in Regulation (EU) No 1305/2013 and relevant to the implementation of financial instruments. Such eligible expenditure shall not exceed EUR 200 000.

12. For the purposes of the second subparagraph of Article 127(1), the COVID-19 outbreak shall constitute a duly justified case that audit authorities may invoke, based on their professional judgement, to use a non-statistical sampling method for the accounting year starting 1 July 2019 and ending 30 June 2020.

13. For the purposes of application of point (f) of Article 30(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council [1], the condition that appropriations are for the same objective shall not apply in respect of transfers under paragraphs 2 and 3 of this Article.

▼**M17**

Article 25b

Exceptional measures for the use of the Funds to support SMEs particularly affected by energy price increases, vulnerable households, and short-time work and equivalent schemes

1. As an exceptional measure strictly necessary to address the energy crisis resulting from the impact of Russia's war of aggression against Ukraine, the ERDF may support the financing of working capital in the form of grants to SMEs particularly affected by energy price increases, under the investment priority referred to in Article 5(3), point (d), of Regulation (EU) No 1301/2013. SMEs particularly affected by energy price increases are those eligible to receive aid for additional costs due to exceptionally severe increases in natural gas and electricity prices under the temporary crisis framework for State-aid measures.

As a further exceptional measure strictly necessary to address the energy crisis resulting from the impact of Russia's war of aggression against Ukraine, the ESF may support vulnerable households to help them meet their energy consumption costs, even without any corresponding active measures, under the investment priority referred to in Article 3(1), point (b)(iv), of Regulation (EU) No 1304/2013.

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

▼M17

2. Operations providing the support referred to in paragraph 1 may be financed either by the ERDF or the ESF on the basis of the rules applicable to the other Fund. In addition, where such operations contribute to one of the investment priorities referred to in paragraph 1, they may be financed by the Cohesion Fund on the basis of the rules applicable either to the ERDF or the ESF. Furthermore, the ERDF and the Cohesion Fund may also finance access to the labour market by maintaining the jobs of employees and the self-employed through short-time work and equivalent schemes, on the basis of the rules applicable to the ESF under the investment priority referred to in Article 3(1), point (a)(v), of Regulation (EU) No 1304/2013.

3. Operations providing the support referred to in paragraphs 1 and 2 shall be programmed exclusively under a new dedicated priority axis. The dedicated priority axis may comprise funding from the ERDF and the ESF from different categories of regions and from the Cohesion Fund. Support provided by REACT-EU resources, within the meaning of Article 92a, shall be programmed under a separate dedicated priority axis contributing to the investment priority referred to in Article 92b(9), third subparagraph.

The amounts allocated to the dedicated priority axes referred to in the first subparagraph of this paragraph shall not exceed 10 % of the total ERDF, ESF and Cohesion Fund resources, including REACT-EU resources under the Investment for growth and jobs goal, allocated to the Member State concerned for the 2014-2020 programming period, as laid down in the relevant Commission implementing acts. By way of derogation from the first and second subparagraphs of Article 120(3), a co-financing rate of 100 % shall be applied to the dedicated priority axis or axes.

4. Requests for the amendment of an existing operational programme submitted by a Member State aiming at introducing a dedicated priority axis or axes referred to in paragraph 3 shall be duly justified and accompanied by the revised programme. The elements listed in Article 96(2), point (b)(v) and (vii), shall not be required in the description of the priority axis or axes in the revised operational programme.

5. By way of derogation from Article 65(9), expenditure for operations supporting the financing of working capital in the form of grants in SMEs particularly affected by energy price increases, for operations providing support to vulnerable households to help them meet their energy consumption costs, and for short-time work and equivalent schemes shall be eligible from 1 February 2022. Article 65(6) shall not apply in respect of such operations and schemes.

6. By way of derogation from Article 125(3), point (b), operations supporting the financing of working capital in the form of grants to SMEs particularly affected by energy price increases, operations providing support to vulnerable households to help them meet their energy consumption costs, and short-time work and equivalent schemes may be selected for support by the ERDF, the ESF or the Cohesion Fund prior to the approval of the revised programme.

▼M17

7. For operations supporting the financing of working capital in the form of grants to SMEs particularly affected by energy price increases implemented outside the programme area but within the Member State, only point (d) of Article 70(2), first subparagraph, shall apply. By way of derogation from Article 70(4), to operations supported by the ESF providing support to vulnerable households to help them meet their energy consumption costs and to short-time work and equivalent schemes implemented outside the programme area but within the Member State, Article 70(2), first subparagraph, point (d), shall also apply.

8. The total payments by the Commission to Member States from the ERDF, the ESF, and the Cohesion Fund, excluding REACT-EU resources, for the dedicated priorities referred to in paragraph 3 shall not exceed EUR 5 000 000 000 in 2023. Amounts shall be paid subject to available funding under the ceilings of the multiannual financial framework 2014-2020.

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

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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).

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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.

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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.

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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.

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Where the amendment of a programme affects the information provided in the Partnership Agreement, the procedure set out in Article 16(4a) shall apply.

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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

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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. ►M6 ——————— ◄

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

▼M9

5. By way of derogation from paragraphs 1 and 2, for the programmes supported by the ERDF, Cohesion Fund and ESF, the Member State may transfer during the programming period an amount of up to 8 % of the allocation as of 1 February 2020 of a priority and no more than 4 % of the programme budget to another priority of the same Fund of the same programme.

Such transfers shall not affect previous years. They shall be considered to be not substantial and shall not require a decision of the Commission amending the programme. They shall however comply with all regulatory requirements and shall be approved by the monitoring committee in advance. The Member State shall notify the revised financial tables to the Commission.

▼M16

6. By way of derogation from paragraphs 1 and 2, for programmes supported by the ERDF, the ESF or the Cohesion Fund, the Member State may transfer financial allocations between different thematic objectives within the same priority of the same Fund and category of region of the same programme.

Such transfers shall be considered to be not substantial and shall not require a decision of the Commission amending the programme. Nevertheless, these transfers shall comply with all regulatory requirements and shall be approved by the monitoring committee in advance. The Member State shall notify the revised financial tables to the Commission.

7. By way of derogation from paragraphs 1 and 2, the application of a co-financing rate of up to 100 % pursuant to Article 120(9) to a priority axis promoting the socioeconomic integration of third country nationals that has been established within a programme, including those dedicated to operations addressing migratory challenges as a result of the military aggression by the Russian Federation shall not require a decision of the Commission amending the programme. The amendment shall be approved by the monitoring committee in advance. The Member State shall notify the revised financial tables to the Commission.

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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.

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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.

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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 preparatory, running and animation costs under points (a), (d) and (e) of Article 35(1) for the community-led local development strategy.

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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.

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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 ►C1 on the basis of a proposal by a Member State, the Commission may adopt or amend those population limits in its decision under Article 16(2) or (4) ◄ 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:

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(a) building the capacity of local actors, including potential beneficiaries, to develop and implement operations including by fostering their capacity to prepare and manage their projects;

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(b) drawing up a non-discriminatory and transparent selection procedure which avoids conflicts of interests, ensures that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allows selection by written procedure;

(c) drawing up and approving non-discriminatory objective criteria for the selection of operations that ensure coherence with the community-led local development strategy 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;

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(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.

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Where local action groups carry out tasks not covered by points (a) to (g) of the first subparagraph that fall under the responsibility of the managing or certifying authority or of the paying agency, those local action groups shall be designated as intermediate bodies in accordance with the Fund-specific rules.

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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 capacitybuilding, 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;

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(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.

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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.

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

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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

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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;

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(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 the extent of, differentiated treatment as referred to in Article 43a to attract counterpart resources from investors operating under the market economy principle and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment, such as a competitive or appropriately independent assessment process;

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(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.

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3. The *ex ante* assessment referred to in paragraph 2 of this Article may take into account the *ex ante* evaluations referred to in point (h) of the first subparagraph and the second subparagraph of Article 209(2) of the Financial Regulation and 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.

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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.

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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.

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Financial instruments may also provide support in the form of working capital to SMEs, if necessary as a temporary measure, to provide an effective response to a public health crisis.

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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.

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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, including from the European Fund for Strategic Investments (EFSI)

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established by Regulation (EU) 2015/1017 of the European Parliament and of the Council [1], in accordance with applicable Union State aid rules, as appropriate. 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.

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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:

[1] Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

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(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;

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(c) financial instruments combining such contribution with EIB financial products under the EFSI in accordance with Article 39a.

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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;

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(b) entrust implementation tasks, through the direct award of a contract, to:

(i) the EIB;

(ii) an international financial institution in which a Member State is a shareholder;

(iii) a publicly-owned bank or institution, established as a legal entity carrying out financial activities on a professional basis, which fulfils all of the following conditions:

— there is no direct private capital participation, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the relevant bank or institution, and with the exception of forms of private capital participation which confer no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds;

— operates under a public policy mandate given by the relevant authority of a Member State at national or regional level, which includes carrying out, as all or part of its activities, economic development activities contributing to the objectives of the ESI Funds;

— carries out, as all or part of its activities, economic development activities contributing to the objectives of the ESI Funds in regions, policy areas or sectors for which access to funding from market sources is not generally available or sufficient;

— operates without primarily focussing on maximising profits, but ensures a long-term financial sustainability for its activities;

— ensures that the direct award of a contract referred to in point (b) does not provide any direct or indirect benefit for commercial activities by way of appropriate measures in accordance with applicable law;

— is subject to the supervision of an independent authority in accordance with applicable law;

(c) entrust implementation tasks to another body governed by public or private law; or

(d) 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 within the meaning of point (10) of Article 2.

When implementing the financial instrument, the bodies referred to in points (a) to (d) of the first subparagraph of this paragraph shall ensure compliance with applicable law and with the requirements laid down in Article 155(2) and (3) of the Financial Regulation.

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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.

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5. The bodies referred to in points (a), (b) and (c) of the first subparagraph of paragraph 4 of this Article may, when implementing funds of funds further entrust part of the implementation to financial intermediaries provided that such bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 33(1) and 209(2) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests.

6. The bodies referred to in points (b) and (c) 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 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 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), (b) and (c) 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 IV at the following levels:

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(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.

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8. For financial instruments implemented under point (d) 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.

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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.

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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 of this Article and in Article 39a(5). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

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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.

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2. Member States may use the ERDF and EAFRD during the eligibility period set out in Article 65(2) of this Regulation to provide a financial contribution to financial instruments referred to in point (a) of Article 38(1) of this Regulation, implemented indirectly by the Commission with the EIB pursuant to point (c)(iii) of the first subparagraph of Article 62(1) of the Financial Regulation and Article 208(4) of the Financial Regulation, in respect of the following activities:

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(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 ([1]), of any of the following:

(i) existing portfolios of debt finance to SMEs and other enterprises with less than 500 employees;

(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 ([2]) and in Regulation (EU) No 575/2013 to ensure adequate alignment of

([1]) 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).

([2]) 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).

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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 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:

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(a) by way of derogation from Article 37(2), it shall be based on an *ex ante* assessment at Union level carried out by the EIB and the Commission or, where more recent data are available, on an *ex ante* assessment at Union, national or regional level.

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 the relevant level, SME financing conditions and needs as well as an indication of the SME financing gap, a profile of the economic and financial situation of the SME sector at the relevant 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 separate priority axis within a programme in the case of ERDF contribution, or 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;

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(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).

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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.

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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 payment application 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 payment applications shall be based on the amounts requested by the EIB deemed necessary to cover commitments under guarantee agreements 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 as referred to in points (a) and (b) of the first subparagraph of Article 42(1) 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(1);

(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 set out in Article 65(2).

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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

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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.

▼M6

Article 39a

Contribution of ESI Funds to financial instruments combining such contribution with EIB financial products under the European Fund for Strategic Investments

1. In order to attract additional private sector investment managing authorities may use the ESI Funds to provide a contribution to financial instruments referred to in point (c) of Article 38(1) provided that it contributes, inter alia, to the achievement of the objectives of the ESI Funds and to the Union strategy for smart, sustainable and inclusive growth.

2. The contribution referred to in paragraph 1 shall not exceed 25 % of the total support provided to final recipients. In the less developed regions referred to in point (b) of the first subparagraph of Article 120(3), the financial contribution may exceed 25 % where duly justified by the assessments referred to in Article 37(2) or in paragraph 3 of this Article, but shall not exceed 40 %. The total support referred to in this paragraph shall comprise the total amount of new loans and guaranteed loans as well as equity and quasi-equity investments provided to final recipients. The guaranteed loans referred to in this paragraph shall only be taken into account to the extent that the ESI Funds resources are committed for guarantee contracts calculated on the basis of a prudent *ex ante* risk assessment covering a multiple amount of new loans.

▼**M6**

3. By way of derogation from Article 37(2), contributions pursuant to paragraph 1 of this Article may be based on the preparatory assessment, including the due diligence, carried out by the EIB for the purposes of its contribution to the financial product under the EFSI.

4. Reporting by managing authorities under Article 46 of this Regulation on operations comprising financial instruments under this Article shall be based on the information kept by the EIB for the purposes of its reporting pursuant to Article 16(1) and (2) of Regulation (EU) 2015/1017, supplemented by the additional information required under Article 46(2) of this Regulation. The requirements set out in this paragraph shall allow for uniform reporting conditions in accordance with Article 46(3) of this Regulation.

5. When contributing to financial instruments referred to in point (c) of Article 38(1) the managing authority may do any of the following:

(a) invest in the capital of an existing or newly created legal entity dedicated to implement investments in final recipients consistent with the objectives of the respective ESI Funds which will undertake implementation tasks;

(b) entrust implementation tasks in accordance with points (b) and (c) of the first subparagraph of Article 38(4).

The body entrusted with implementation tasks as referred to in point (b) of the first subparagraph of this paragraph shall either open a fiduciary account in its name and on behalf of the managing authority or set up a separate block of finance within the institution for programme contribution. 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 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.

For the purposes of this Article, a financial instrument may also take the form or be part of an investment platform in line with Article 2(4) of Regulation (EU) 2015/1017, provided that the investment platform takes the form of a special purpose vehicle or a managed account.

6. When implementing financial instruments under point (c) of Article 38(1) of this Regulation, the bodies referred to in paragraph 5 of this Article shall ensure compliance with applicable law and with the requirements laid down in Article 155(2) and (3) of the Financial Regulation.

7. By 3 November 2018, the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by 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 point (c) of Article 38(1).

▼M6

8. The bodies referred to in paragraph 5 of this Article, when implementing funds of funds may further entrust part of the implementation to financial intermediaries provided that such bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 33(1) and 209(2) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests.

9. Where, for the purposes of implementing financial instruments referred to in point (c) of Article 38(1), managing authorities contribute the ESI Funds programme resources to an existing instrument, the fund manager of which has already been selected by the EIB, an international financial institution in which a Member State is a shareholder, or a publicly-owned bank or institution, established as a legal entity carrying out financial activities on a professional basis and fulfilling the conditions set out in point (b)(iii) of the first subparagraph of Article 38(4), they shall entrust implementation tasks to that fund manager through the award of a direct contract.

10. By way of derogation from Article 41(1) and (2), for contributions to financial instruments under paragraph 9 of this Article, applications for interim payment shall be phased in line with the payment schedule set out in the funding agreement. The payment schedule referred to in the first sentence of this paragraph shall correspond to the payment schedule agreed for other investors in the same financial instrument.

11. The terms and conditions for contributions pursuant to point (c) of Article 38(1) shall be set out in funding agreements in accordance with Annex IV 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;

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

12. For contributions pursuant to paragraph 1 of this Article to investment platforms which receive contributions from instruments set up at Union level, consistency with State aid rules shall be ensured in accordance with point (c) of the first subparagraph of Article 209(2) of the Financial Regulation.

13. In the case of financial instruments referred to in point (c) of Article 38(1) which take the form of a guarantee instrument, Member States may decide that the ESI Funds contribute, as appropriate, to different tranches of portfolios of loans covered also under the EU guarantee pursuant to Regulation (EU) 2015/1017.

14. For the ERDF, the ESF, the Cohesion Fund and the EMFF, a separate priority, and for the EAFRD, a separate type of operation, with a co-financing rate of up to 100 % may be established within a programme to support operations implemented through financial instruments referred to in point (c) of Article 38(1).

▼M6

15. Notwithstanding Article 70 and Article 93(1), contributions pursuant to paragraph 1 of this Article may be used for the purpose of giving rise to new debt and equity finance in the entire territory of the Member State without regard to the categories of region, unless otherwise provided in the funding agreement.

16. By 31 December 2019, the Commission shall carry out a review of the application of this Article and shall where appropriate submit to the European Parliament and Council a legislative proposal.

▼B

Article 40

Management and control of financial instruments

▼M6

1. The authorities designated in accordance with Article 124 of this Regulation and with Article 65 of the EAFRD Regulation shall not carry out on-the-spot verifications at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.

However, the designated authorities shall carry out verifications in accordance with Article 125(5) of this Regulation and checks in accordance with Article 59(1) of Regulation (EU) No 1306/2013 at the level of other bodies implementing the financial instruments in the jurisdiction of their respective Member State.

The EIB and other international financial institutions in which a Member State is a shareholder shall provide to the designated authorities a control report with each application for payment. They shall also provide to the Commission and to the designated authorities an annual audit report drawn up by their external auditors. Those reporting obligations are without prejudice to the reporting obligations, including as regards the performance of the financial instruments, as set out in Article 46(1) and (2) of this Regulation.

The Commission shall be empowered to adopt an implementing act concerning the models for the control reports and the annual audit reports referred to in the third subparagraph of this paragraph.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

2. Without prejudice to Article 127 of this Regulation and Article 9 of Regulation (EU) No 1306/2013, the bodies responsible for the audit of the programmes shall not carry out audits at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.

The bodies responsible for the audit of the programmes shall carry out audits of operations and of management and control systems at the level of other bodies implementing the financial instruments in their respective Member States and at the level of the final recipients provided that the conditions set out in paragraph 3 are fulfilled.

The Commission may carry out audits at the level of the bodies referred to in paragraph 1, where it concludes that this is necessary to obtain reasonable assurance given the risks identified.

▼M6

2a. As regards financial instruments referred to in point (a) of Article 38(1) and Article 39 which were established by a funding agreement signed before 2 August 2018, the rules set out in this Article applicable at the moment of the signature of the funding agreement shall apply, by way of derogation from paragraphs 1 and 2 of this Article.

▼B

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.

▼M6

4. By 3 November 2018, the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by laying down additional specific rules on the management and control of financial instruments referred to in points (b) and (c) of Article 38(1), the types of controls to be performed by managing and audit authorities, the arrangements for keeping supporting documents and the elements to be evidenced by supporting documents.

▼B

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.

▼M6

5a. By way of derogation from Article 143(4) of this Regulation and from the second paragraph of Article 56 of Regulation (EU) No 1306/2013, in operations comprising financial instruments, a contribution cancelled in accordance with Article 143(2) of this Regulation or in accordance with the first paragraph of Article 56 of Regulation (EU) No 1306/2013, as a result of an individual irregularity, may be reused within the same operation under the following conditions:

(a) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the final recipient, the contribution cancelled may be reused only for other final recipients within the same financial instrument;

(b) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the financial intermediary within a fund of funds, the contribution cancelled may be reused only for other financial intermediaries.

▼M6

Where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the body implementing funds of funds, or at the level of the body implementing financial instruments where a financial instrument is implemented through a structure without a fund of funds, the contribution cancelled may not be reused within the same operation.

Where a financial correction is made for a systemic irregularity, the contribution cancelled may not be reused for any operation affected by the systemic irregularity.

▼B

Article 41

▼C1

Payment applications including expenditure for financial instruments

▼M6

1. As regards financial instruments referred to in points (a) and (c) of Article 38(1), and as regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a), (b) and (c) of the first subparagraph of Article 38(4), phased applications for interim payment 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:

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(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:

►C1 (i) for the second application for interim payment, when at least 60 % of the amount included in the first application for interim payment has been spent as eligible expenditure ◄ within the meaning of points (a), (b) and (d) of Article 42(1);

►C1 (ii) for the third and subsequent applications for interim payment, when at least 85 % of the amounts included in the previous applications for interim payment have been spent as eligible expenditure ◄ within the meaning of points (a), (b) and (d) of Article 42(1);

▼B

►C1 (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 instruments 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.

▼M6

2. As regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with point (d) of the first subparagraph of Article 38(4), the applications for interim payment 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 the first subparagraph of Article 42(1).

▼C1

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 payment.

▼B

►C1 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 payment 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;

▼B

(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.

▼M6

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 2018, 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 the 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.

▼B

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.

►C1 4. The eligible expenditure disclosed in accordance with paragraphs 1, 2 and 3 shall not exceed ◄ the sum of the:

▼B

►C1 (a) total amount of the support from the ESI Funds paid for the purposes of paragraphs 1, 2 and 3 ◄; and

(b) corresponding national co-financing.

▼M6

5. Where management costs and fees as referred to in point (d) of the first subparagraph of paragraph 1 of this Article and in paragraph 2 of this Article are charged by the body implementing the fund of funds or bodies implementing financial instruments pursuant to point (c) of Article 38(1) and points (a), (b) and (c) of the first subparagraph of Article 38(4), they 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.

▼B

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.

►C1 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 in accordance with Article 42(2) and (3), 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.

▼B

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

▼M6

Article 43a

Differentiated treatment of investors

1. Support from the ESI Funds to financial instruments invested in final recipients and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by those investments, which are attributable to the support from the ESI Funds, may be used for differentiated treatment of investors operating under the market economy principle, as well as of the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. Such differentiated treatment shall be justified by the need to attract private counterpart resources and to leverage public funding.

2. The assessments referred to in Articles 37(2) and 39a(3) shall include, as appropriate, an assessment of the need for, and the extent of, differentiated treatment as referred to in paragraph 1 of this Article and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment.

3. The differentiated treatment shall not exceed what is necessary to create the incentives for attracting private counterpart resources. It shall not over-compensate investors operating under the market economy principle, or the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. The alignment of interest shall be ensured through an appropriate sharing of risk and profit.

4. Differentiated treatment of investors operating under the market economy principle shall be without prejudice to the Union State aid rules.

▼B

Article 44

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

▼M6

1. Without prejudice to Article 43a, 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, to cover the losses in the nominal amount of the ESI Funds contribution to the financial instrument resulting from negative interest, if such losses occur despite active treasury management by the bodies implementing financial instruments;

▼M6

(c) where applicable, reimbursement of management costs incurred and payment of management fees of the financial instrument.

▼C1

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

▼B

Article 45

►C1 Re-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 re-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;

▼M6

(c) identification of the bodies implementing financial instruments, and the bodies implementing funds of funds where applicable, as referred to under points (a), (b) and (c) of Article 38(1);

▼B

(d) total amount of programme contributions by priority or measure paid to the financial instrument;

▼B

(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;

▼M6

(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 and amounts used for differentiated treatment as referred to in Article 43a;

(h) progress in achieving the expected leverage effect of investments made by the financial instrument;

▼B

(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.

▼B

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.

▼B

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.

▼C1

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

▼B

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.

▼M6

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. It may also make observations on the visibility of support from the ESI Funds and on raising awareness about the results of such support. It shall monitor actions taken as a result of its observations.

▼B

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.

▼B

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.

►C1 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 4, 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.

▼B

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

▼M6

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. The meeting shall also review the programme's communication and information activities, in particular the results and effectiveness of measures taken to inform the public about the results and added value of support from the ESI Funds.

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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.

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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.

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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.

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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;

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(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 ([1]) 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.

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.

([1]) 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).

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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.

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3. Paragraph 1 and 2 of this Article shall also apply to the contributions from the ERDF or the EAFRD to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).

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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 ►M6 Article 154 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;

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(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;

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(f) actions to disseminate information, support networking, carry out communication activities with particular attention to the results and added value of support from the ESI Funds, raise awareness and promote cooperation and exchange of experience, including with third countries;

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(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;

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(l) actions financed under Regulation (EU) 2017/825 in order to contribute to delivering the Union strategy for smart, sustainable and inclusive growth.

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The Commission shall dedicate at least 15 % of the resources referred to in this Article to bring about greater efficiency in communication to the public and stronger synergies between the communication activities undertaken at the initiative of the Commission, by extending the knowledge base on results, in particular through more effective data collection and dissemination, evaluations and reporting, and especially by highlighting the contribution of the ESI Funds to improving people's lives, and by increasing the visibility of support from the ESI Funds as well as by raising awareness about the results and the added value of such support. Information, communication and visibility measures on results and added value of support from the ESI Funds, with particular focus on operations, shall be continued after the closure of the programmes, where appropriate. Such measures 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.

Depending on their purpose, the measures referred to in this Article can be financed either as operational or administrative expenditure.

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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.

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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.

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1a. Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds.

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

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3. Without prejudice to paragraph 2, Member States may implement actions referred to in paragraph 1 through the direct award of a contract to:

(a) the EIB;

(b) an international financial institution in which a Member State is a shareholder;

(c) a publicly-owned bank or institution, as referred to in point (b)(iii) of the first subparagraph of Article 38(4).

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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 %.

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Article 61

Operations generating net revenue after completion

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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, with the exception of cost-savings resulting from the implementation of energy efficiency measures, shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies.

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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;

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(aa) application of a flat rate net revenue percentage established by a Member State for a sector or subsector not covered by point (a). Before the application of the flat rate the responsible audit authority shall verify that the flat rate has been established according to a fair, equitable and verifiable method based on historical data or objective criteria;

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(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.

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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.

►C1 4. The method by which the net revenue is deducted from the expenditure of the operation included in the payment application submitted to the Commission shall be ◄ determined in accordance with national rules.

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5. As an alternative to the application of the methods laid down in paragraph 3 of this Article, the maximum co-financing rate referred to in Article 60(1) may, at the request of a Member State, be decreased for a priority or measure under which all supported operations could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3 of this Article. 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 that point.

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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;

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(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;

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(h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation.

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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.

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

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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

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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

►C1 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 payment application 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.

►C1 2. Payments to beneficiaries made in respect of expenditure included in a payment application 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.

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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;

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(g) operations implemented under a joint action plan provided that the net revenue has been taken into account ex ante;

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(h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation with the exception of those operations for which reference is made to this paragraph in the EMFF Regulation; or

(i) operations for which the total eligible cost does not exceed EUR 100 000.

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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.

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By way of derogation from paragraph 9, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020.

▼M14

By way of derogation from paragraph 9, expenditure for operations addressing the migratory challenges as a result of the military aggression by the Russian Federation shall be eligible as of 24 February 2022.

▼M16

10a. Paragraph 6 shall not apply to operations addressing migratory challenges resulting from the military aggression by the Russian Federation.

Paragraph 6 shall also not apply to operations supported by the EMFF addressing the consequences of that aggression on the fisheries and aquaculture sector.

By way of derogation from Article 125(3), point (b), such operations may be selected for support by the ERDF, the ESF, the Cohesion Fund or the EMFF prior to the approval of the amended programme.

▼M6

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 declared in a payment application for one of the ESI Funds is not declared for support from another Fund or Union instrument, or for support from the same Fund under another programme. The amount of expenditure to be entered into a payment application of an ESI Fund may be calculated for each ESI Fund and for the programme or programmes concerned on a pro rata basis in accordance with the document setting out the conditions for support.

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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;

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(c) lump sums;

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(d) flat-rate financing, determined by the application of a percentage to one or more defined categories of costs;

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(e) financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes as set out in the delegated act adopted in accordance with paragraph 5a.

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

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For the form of financing referred to in point (e) of the first subparagraph, the audit shall exclusively aim at verifying that the conditions for reimbursement have been fulfilled.

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

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2a. For an operation or a project not covered by the first sentence of paragraph 4 and which receive support from the ERDF and the ESF, grants and repayable assistance for which the public support does not exceed EUR 100 000 shall take the form of standard scales of unit costs, lump sums or flat rates, except for operations receiving support within the framework of State aid that does not constitute *de minimis* aid.

Where flat-rate financing is used, the categories of costs to which the flat rate is applied may be reimbursed in accordance with point (a) of the first subparagraph of paragraph 1.

For operations supported by the EAFRD, ERDF or the ESF, where the flat rate referred to in Article 68b(1) is used, the allowances and the salaries paid to participants may be reimbursed in accordance with point (a) of the first subparagraph of paragraph 1 of this Article.

This paragraph shall be subject to the transitional provisions set out in Article 152(7).

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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.

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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 points (a) and (e) 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 for the whole operation or project forming a part of an operation.

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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:

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(a) a fair, equitable and verifiable calculation method based on any of the following:

(i) statistical data, other objective information or an expert judgement;

(ii) the verified historical data of individual beneficiaries;

(iii) the application of the usual cost accounting practices of individual beneficiaries;

(aa) a draft budget established on a case-by-case basis and agreed *ex ante* by the managing authority, or in the case of EAFRD the authority responsible for the selection of operations, where the public support does not exceed EUR 100 000;

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(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.

▼M6

5a. The Commission is empowered to adopt delegated acts in accordance with Article 149 supplementing this Regulation with regard to the definition of the standard scales of unit costs or the flat-rate financing referred to in points (b) and (d) of the first subparagraph of paragraph 1 of this Article, the related methods referred to in point (a) of paragraph 5 of this Article and the form of support referred to in point (e) of the first subparagraph of paragraph 1 of this Article, by specifying detailed modalities concerning the financing conditions and their application.

▼B

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.

▼M6

Article 68

Flat-rate financing for indirect costs concerning grants and repayable assistance

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 is empowered to adopt delegated acts in accordance with Article 149 to supplement the provisions on the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.

Article 68a

Staff costs concerning grants and repayable assistance

1. Direct staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation. Member States shall not be required to perform a calculation to determine the applicable rate provided that the direct costs of the operation do not include public works contracts which exceed in value the threshold set out in point (a) of Article 4 of Directive 2014/24/EU.

2. For the purposes of determining staff costs, an hourly rate may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours for persons working full time, or by a corresponding pro-rata of 1 720 hours, for persons working part-time.

3. When applying the hourly rate calculated in accordance with paragraph 2, the total number of hours declared per person for a given year shall not exceed the number of hours used for the calculations of that hourly rate.

The first subparagraph shall not apply to programmes under the European territorial cooperation goal for staff costs related to individuals who work on a part-time assignment on the operation.

▼M6

4. Where annual gross employment costs are not available, they may be derived from the available documented gross employment costs or from the contract for employment, duly adjusted for a 12-month period.

5. Staff costs related to individuals who work on part-time assignment on the operation may be calculated as a fixed percentage of the gross employment costs, in line with a fixed percentage of time worked on the operation per month, with no obligation to establish a separate working time registration system. The employer shall issue a document for employees setting out that fixed percentage.

Article 68b

Flat-rate financing for costs other than staff costs

1. A flat rate of up to 40 % of eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation without a requirement for the Member State to execute any calculation to determine the applicable rate.

For operations supported by the ESF, the ERDF or the EAFRD, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate.

2. The flat rate referred to in paragraph 1 shall not be applied to staff costs calculated on the basis of a flat rate.

▼M15

Article 68c

Unit cost for operations addressing migratory challenges resulting from the military aggression by the Russian Federation

▼M16

For the implementation of operations addressing migratory challenges resulting from the military aggression by the Russian Federation, Member States may include in the expenditure declared in payment applications a unit cost linked to the basic needs and support of persons granted temporary protection or other adequate protection under national law in accordance with Council Implementing Decision (EU) 2022/382 ([1]) and Council Directive 2001/55/EC ([2]). That unit cost shall be EUR 100 per week for each full week or partial week that the person is in the Member State concerned. The unit cost may be used for a maximum of 26 weeks in total, starting from the date of arrival of the person in the Union.

([1]) Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

([2]) Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 12).

▼M15

The amounts calculated on that basis shall be regarded as public support paid to beneficiaries and as eligible expenditure for the purposes of applying this Regulation.

▼B

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);

▼B

(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.

▼M6

Article 70

Eligibility of operations depending on location

1. Subject to the derogations referred to in paragraph 2 and the Fund-specific rules, operations supported by the ESI Funds shall be located in the programme area.

Operations concerning the provision of services to citizens or businesses which cover the whole territory of a Member State shall be considered as being located in all programme areas within a Member State. In such cases, expenditure shall be allocated to the concerned programme areas on a pro-rata basis, based on objective criteria.

The second subparagraph of this paragraph does not apply to the national programme referred to in Article 6(2) of Regulation (EU) No 1305/2013 or to the specific programme for the establishment and the operation of the national rural network referred to in Article 54(1) of that Regulation.

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 from the ERDF, Cohesion Fund, EAFRD or EMFF allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund, EAFRD or EMFF at the level of the priority at the time of adoption of the programme;

▼M6

(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.

Where operations financed from the Funds and the EMFF are implemented outside the programme area in accordance with this paragraph and have benefits both outside and within the programme area, such expenditure shall be allocated to those areas on a pro rata basis based on objective criteria.

Where operations concern the thematic objective referred to in point (1) of the first paragraph of Article 9 and are implemented outside the Member State but within the Union, only points (b) and (d) of the first subparagraph of this paragraph shall apply.

▼M16

Where operations receiving support from the ERDF, the ESF or the Cohesion Fund addressing migratory challenges resulting from the military aggression by the Russian Federation are implemented outside the programme area but within the Member State, only point (d) of the first subparagraph shall apply.

▼M6

3. For operations concerning technical assistance or information, communication and visibility measures and promotional activities, and for operations concerning the thematic objective referred to in point (1) of the first paragraph of Article 9, expenditure may be incurred outside the Union provided that the expenditure is necessary for the satisfactory implementation of the operation.

▼M16

4. Paragraphs 1, 2 and 3 shall not apply to programmes under the European territorial cooperation goal. Paragraphs 2 and 3 shall not apply to operations supported by the ESF, with the exception of the fourth subparagraph of paragraph 2.

▼B

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.

▼B

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.

▼M6

4. Paragraphs 1, 2 and 3 of this Article shall not apply to contributions to or by financial instruments or for lease purchase under point (b) of Article 45(2) of Regulation (EU) No 1305/2013 nor to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.

▼B

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;

▼B

(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).

▼B

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 ►M6 Article 63(5), (6) and (7) 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.

▼M6

2a. The Commission shall provide the competent national authority with:

(a) the draft audit report from the on-the-spot audit or check within three months of the end of that audit or check;

▼M6

(b) the final audit report within three months of the receipt of a complete reply from the competent national authority to the draft audit report from the on-the-spot audit or check concerned.

The reports referred to in points (a) and (b) of the first subparagraph shall be made available within the time limits set out in those points in at least one of the official languages of the institutions of the Union.

The time limit set out in point (a) of the first subparagraph shall not include the period which starts on the date following the date on which the Commission sends its request for additional information to the Member State and lasts until the Member State responds to that request.

This paragraph shall not be applicable to the EAFRD.

▼B

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.

►C1 The decision of the Commission adopting a programme shall constitute a financing decision within the meaning of ►M6 Article 110(1) 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).

▼B

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

▼C1

Payment applications

▼B

►C1 1. The specific procedure and information to be submitted for payment applications in relation to each ESI Fund ◄ shall be laid down in the Fund-specific rules.

►C1 2. The payment application to be submitted to the Commission ◄ shall provide all the information necessary for the Commission to produce accounts in accordance with ►M6 Article 82(2) of the Financial Regulation ◄.

Article 80

Use of the euro

Amounts set out in programmes submitted by Member States, ►C1 forecasts of expenditure, payment applications, 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.

▼B

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;

▼C1

(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 payment application is linked to an irregularity having serious financial consequences;

▼B

(c) there is a failure to submit one of the documents required under ►M6 Article 63(5), (6) and (7) 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 ►M6 Article 63(8) 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.

▼B

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

►C1 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 payment application within a defined period, including any payment application ◄ 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.

▼B

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

►C1 (b) it has not been possible to make a payment application ◄ 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.

▼B

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:

▼B

(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

▼M11

1. The resources for economic, social and territorial cohesion available for budgetary commitment for the period 2014–2020 shall be EUR 330 105 627 309 in 2011 prices, in accordance with the annual breakdown set out in Annex VI, of which EUR 325 938 694 233 represents the global resources allocated to the ERDF, the ESF and the Cohesion Fund, and EUR 4 166 933 076 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.

▼B

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).

▼M3

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, of which up to EUR 112 233 000 in current prices shall be allocated to the Structural Reform Support Programme established by Regulation (EU) 2017/825 for use within the scope and purpose of that programme.

▼B

Article 92

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

▼M7

1. Resources for the Investment for growth and jobs goal shall amount to 96,09 % of the global resources (i.e., a total of EUR 317 073 545 392) and shall be allocated as follows:

(a) 51,52 % (i.e., a total of EUR 163 359 380 738) for less developed regions;

(b) 10,82 % (i.e., a total of EUR 34 319 221 039) for transition regions;

(c) 16,33 % (i.e., a total of EUR 51 773 321 432) for more developed regions;

(d) 20,89 % (i.e., a total of EUR 66 236 030 665) for Member States supported by the Cohesion Fund;

(e) 0,44 % (i.e., a total of EUR 1 385 591 518) 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.

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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).

►C1 3. In 2016, the Commission shall, in its technical adjustment for the year 2017 in accordance with Articles 6 and 7 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

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the total allocations, the total allocations shall be adjusted correspondingly. In accordance with Article 7 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.

▼M11

5. Resources for the YEI shall amount to EUR 4 166 933 076, of which EUR 23,7 million constitutes the additional resources for 2020. Those resources shall be complemented by ESF targeted investment in accordance with Article 22 of the ESF Regulation.

Member States that benefit from the additional resources for the specific allocation for the YEI may request the transfer of up to 50 % of these additional resources to the ESF in order to constitute the corresponding ESF targeted investment as required by Article 22(1) of the ESF Regulation. Such a transfer shall be made to the respective categories of region corresponding to the categorisation of the regions eligible for the increase of the specific allocation for the YEI. Member States shall request the transfer in the request for amendment of the programme in accordance with Article 30(1) of this Regulation. Resources allocated to past years may not be transferred.

The second subparagraph of this paragraph shall apply to any additional resources for specific allocation for the YEI allocated in 2019 and 2020.

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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.

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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.

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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.

▼M5

9. Resources for the European territorial cooperation goal shall amount to 2,69 % of the global resources available for budgetary commitment from the Funds for the period 2014-2020 (i.e., a total of EUR 8 865 148 841).

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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.

▼M13

Article 92a

REACT-EU resources

The measures referred to in Article 1(2) of Council Regulation (EU) 2020/2094 ([1]) shall be implemented under the Structural Funds with an amount of up to EUR 47 500 000 000 in 2018 prices as referred to in point (a)(i) of Article 2(2) of that Regulation, subject to its Article 3(3), (4), (7) and (9).

These additional resources for 2021 and 2022, stemming from the European Union Recovery Instrument, shall provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy ('REACT-EU resources').

As provided for in Article 3(1) of Regulation (EU) 2020/2094, the REACT-EU resources shall constitute external assigned revenues for the purpose of Article 21(5) of the Financial Regulation.

Article 92b

Implementing arrangements for the REACT-EU resources

1. The REACT-EU resources shall be made available under the Investment for growth and jobs goal.

By way of derogation from Article 94, Member States shall also jointly allocate part of their REACT-EU resources to cross-border co-operation programmes under the European territorial cooperation goal in which they participate, if they agree that such allocations reflect their respective national priorities.

([1]) Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433, 22.12.2020, p. 23).

▼**M13**

The REACT-EU resources shall be used to implement technical assistance pursuant to paragraph 6 of this Article and the operations implementing the thematic objective referred to in the first subparagraph of paragraph 9 of this Article.

2. The REACT-EU resources shall be made available for budgetary commitment for the years 2021 and 2022, in addition to the global resources set out in Article 91, as follows:

— 2021: EUR 37 500 000 000,

— 2022: EUR 10 000 000 000.

The REACT-EU resources shall also support administrative expenditure up to EUR 18 000 000 in 2018 prices.

Operations to be supported by the REACT-EU resources may be selected for support up to the end of 2023. The phasing provisions set out in a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument are applicable to operations supported by the REACT-EU resources.

3. 0,35 % of the REACT-EU resources shall be allocated to technical assistance at the initiative of the Commission, with a special focus on Member States hit harder by the COVID-19 pandemic and Member States with lower absorption and implementation rates.

4. The Commission shall adopt a decision, by means of implementing acts, setting out the breakdown of the REACT-EU resources as appropriations from the Structural Funds for 2021 for each Member State in accordance with the criteria and methodology set out in Annex VIIa. That decision shall be revised in 2021 to set out the breakdown of the REACT-EU resources for 2022 based on data available by 19 October 2021.

5. By way of derogation from the first paragraph of Article 76, the budget commitments for the REACT-EU resources in respect of each operational programme concerned shall be made for each Fund for the years 2021 and 2022.

The legal commitment referred to in the second paragraph of Article 76 for the years 2021 and 2022 shall enter into force on or after the date referred to in Article 3(3) of Regulation (EU) 2020/2094.

The third and fourth paragraphs of Article 76 shall not apply in respect of the REACT-EU resources.

By way of derogation from Article 14(3) of the Financial Regulation, the de-commitment rules set out in Chapter IV of Title IX of Part II and in Article 136 of this Regulation shall apply to the budgetary commitments based on the REACT-EU resources. By way of derogation from point (c) of Article 12(4) of the Financial Regulation, the REACT-EU resources shall not be used for a succeeding programme or action.

▼**M13**

By way of derogation from Articles 86(2) and 136(1) of this Regulation, the commitments for the REACT-EU resources shall be decommitted in accordance with the rules to be followed for the closure of the programmes.

Each Member State shall allocate the REACT-EU resources available for programming under the ERDF and the ESF to operational programmes or to cross-border cooperation programmes, involving local and regional authorities, as well as relevant bodies representing civil society and social partners, in accordance with the partnership principle.

By way of derogation from Article 92(7), a part of the REACT-EU resources shall also be proposed to be used, if the Member State concerned considers it appropriate, to increase the support for the Fund for European Aid to the Most Deprived ('FEAD'), in order to address the situation of those who have been hit to an unprecedented degree by the COVID-19 crisis. A part of the REACT-EU resources may also be used to increase the support for the YEI. In both cases, the increase may be proposed before or at the same time as the allocation to the ERDF and the ESF.

Following their initial allocation, the REACT-EU resources may, at the request of a Member State for amendment of an operational programme pursuant to Article 30(1), be transferred between the ERDF and the ESF, irrespective of the percentages referred to in points (a), (b) and (c) of Article 92(1), keeping the overall operational strength of the ESF at Union level. This subparagraph shall not apply to ERDF resources allocated to cross-border cooperation programmes under the European territorial cooperation goal.

Article 30(5) shall not apply to the REACT-EU resources. Those resources shall be excluded from the basis of calculation for the purposes of the ceilings established in that paragraph.

For the purposes of the application of point (f) of Article 30(1) of the Financial Regulation, the condition that appropriations are to be for the same objective shall not apply in respect of such transfers. Such transfers may only apply to the ongoing year or to future years in the financial plan.

The requirements laid down in Article 92(4) of this Regulation shall not apply to the initial allocation or the subsequent transfers of the REACT-EU resources.

The REACT-EU resources shall be implemented in accordance with the rules of the Fund to which they are allocated or transferred.

6. Up to 4 % of the total REACT-EU resources under the ERDF and the ESF may be allocated to technical assistance at the initiative of the Member States, under any existing operational programme supported from the ERDF or the ESF or a new operational programme or programmes referred to in paragraph 10.

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Up to 6 % of the additional ERDF resources allocated to a cross-border cooperation programme under the European territorial cooperation goal pursuant to the second subparagraph of paragraph 1 may be allocated to technical assistance.

7. By way of derogation from Articles 81(1) and 134(1), the initial pre-financing to be paid following the Commission decision adopting an operational programme or approving the amendment to an operational programme for the allocation of the REACT-EU resources shall be 11 % of the REACT-EU resources allocated to programmes for the year 2021.

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In addition to the initial pre-financing set out in the first subparagraph, the Commission shall pay 4 % of the REACT-EU resources allocated to programmes for the year 2021 as additional initial pre-financing in 2022. For programmes in Member States which have had a level of arrivals of persons from Ukraine greater than 1 % of their national population between 24 February 2022 and 23 March 2022, that percentage shall be increased to 34 %.

When submitting the final implementation report required under Article 50(1) and Article 111, Member States shall report on the use made of the additional initial pre-financing provided for in the second subparagraph of this paragraph to address the migratory challenges faced as a result of the military aggression by the Russian Federation and the contribution of that additional initial pre-financing to the recovery of the economy.

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For the purpose of applying Article 134(2) to the annual pre-financing in the years 2021, 2022 and 2023, the amount of the support from the Funds for the whole programming period to the operational programme shall include the REACT-EU resources.

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Where the Commission decision approving the operational programme or the amendment to the operational programme allocating the REACT-EU resources for 2021 was adopted after 31 December 2021 and the related pre-financing not paid, the amount of initial pre-financing referred to in the first and second subparagraphs of this paragraph shall be paid in 2022.

The amount paid as initial pre-financing referred to in the first and second subparagraphs of this paragraph shall be totally cleared from the Commission accounts not later than when the operational programme is closed.

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8. The REACT-EU resources not allocated to technical assistance shall be used under the thematic objective referred to in the first subparagraph of paragraph 9 to support operations that foster crisis repair in the context of the COVID-19 pandemic and its social consequences and prepare a green, digital and resilient recovery of the economy.

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Member States may allocate the REACT-EU resources either to one or more separate priority axes within an existing operational programme or programmes under the Investment for growth and jobs goal or within an existing cross-border cooperation programme or programmes under the European territorial cooperation goal, or to a new operational programme or programmes referred to in paragraph 10 of this Article under the Investment for growth and jobs goal. By way of derogation from Article 26(1), the programme shall cover the period until 31 December 2022, subject to paragraph 4 of this Article.

For the ERDF, the REACT-EU resources shall be used primarily to support investments in products and services for health services or in social infrastructure, to provide support in the form of working capital or investment support to SMEs' investments in sectors with a high job creation potential, to support investments contributing to the transition towards a digital and green economy, to support investments in infrastructure providing basic services to citizens, and to support economic support measures in the regions which are most dependent on sectors most affected by the COVID-19 crisis.

For the ESF, the REACT-EU resources shall be used primarily to support access to the labour market by maintaining jobs of employees and of the self-employed, including through short-time work schemes even when that support is not combined with active labour market measures, unless those measures are imposed by national law. The REACT-EU resources shall support job creation and quality employment, in particular for people in vulnerable situations, and extend youth employment measures in line with the reinforced Youth Guarantee. Investments in education, training and skills development shall be directed to address the twin green and digital transitions.

The REACT-EU resources shall also support social systems contributing to social inclusion, anti-discrimination and poverty eradication measures, with a particular focus on child poverty and enhance equal access to social services of general interest, including for children, the elderly, persons with disabilities, ethnic minorities and the homeless.

9. With the exception of technical assistance referred to in paragraph 6 of this Article and of the REACT-EU resources used for the FEAD or for the YEI referred to in the seventh subparagraph of paragraph 5 of this Article, the REACT-EU resources shall support operations under the new thematic objective 'Fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and preparing a green, digital and resilient recovery of the economy', complementing the thematic objectives set out in Article 9.

The thematic objective referred to in the first subparagraph of this paragraph shall be available exclusively for the programming of the REACT-EU resources. By way of derogation from points (b), (c) and (d) of Article 96(1) of this Regulation and from Article 8(1) of Regulation (EU) No 1299/2013, it shall not be combined with other investment priorities.

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The thematic objective referred to in the first subparagraph of this paragraph shall also constitute the single investment priority for the programming and implementation of the REACT-EU resources from the ERDF and the ESF.

Where one or more separate priority axes are established corresponding to the thematic objective referred to in the first subparagraph of this paragraph within an existing operational programme, the elements listed in points (b)(v) and (vii) of Article 96(2) of this Regulation and in points (b)(v) and (vi) of Article 8(2) of Regulation (EU) No 1299/2013 shall not be required for the description of the priority axis in the revised operational programme.

The revised financing plan set out in point (d) of Article 96(2) of this Regulation and in point (d) of Article 8(2) of Regulation (EU) No 1299/2013 shall set out the allocation of the REACT-EU resources for the year 2021 and, where applicable, for 2022 without identifying amounts for the performance reserve and with no breakdown per category of regions.

By way of derogation from Article 30(1) of this Regulation, requests for the amendment of a programme 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 fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and on preparing a green, digital and resilient recovery of the economy. Those requests shall be accompanied by the revised programme.

10. By way of derogation from Article 26(4), new dedicated operational programmes under the Investment for growth and jobs goal may be drawn up by Member States under the new thematic objective referred to in the first subparagraph of paragraph 9 of this Article. No *ex ante* evaluation as set out in Article 55 shall be required.

By way of derogation from point (a) of Article 96(2), where such a new operational programme is established, the justification shall set out the expected impact of the operational programme on fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and on preparing a green, digital and resilient recovery of the economy.

Where such a new operational programme is established, only authorities already designated under ongoing operational programmes supported by the ERDF, the ESF and the Cohesion Fund may be identified by the Member States for the purposes of point (a) of Article 96(5).

The elements set out in points (b)(v) and (vii) of the first subparagraph of paragraph 2, in paragraph 4, in points (b) and (c) of paragraph 6 and in paragraph 7 of Article 96 shall not be required for such new operational programme. The elements set out in Article 96(3) shall only be required where corresponding support is provided.

By way of derogation from Article 29(3) and (4) and Article 30(2), the Commission shall do its utmost to approve any new dedicated operational programme or any amendment to an existing programme within 15 working days of its submission by a Member State.

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11. By way of derogation from Article 65(2) and (9), expenditure for operations supported under the thematic objective referred to in the first subparagraph of paragraph 9 of this Article shall be eligible from 1 February 2020.

12. By way of derogation from the first and second subparagraphs of Article 120(3), a co-financing rate of up to 100 % may be applied to the priority axis or axes supported by the REACT-EU resources programmed under the thematic objective referred to in the first subparagraph of paragraph 9 of this Article. Further to the common indicators set out in the Fund-specific rules, Member States shall also, where appropriate, make use of COVID-19 programme-specific indicators made available by the Commission.

By way of derogation from Articles 56(3) and 114(2), the Member States shall ensure that by 31 December 2024 at least one evaluation on the use of the REACT-EU resources is carried out to assess their effectiveness, efficiency, impact and, where applicable, inclusiveness and non-discrimination, including from a gender perspective, and how they contributed to the thematic objective referred to in the first subparagraph of paragraph 9 of this Article.

13. The following provisions shall not apply to the REACT-EU resources:

(a) thematic concentration requirements including thresholds established for sustainable urban development as set out in this Regulation or the Fund-specific rules, by way of derogation from Article 18;

(b) *ex ante* conditionalities, by way of derogation from Article 19 and the Fund-specific rules;

(c) requirements on the performance reserve and application of the performance framework, by way of derogation from Articles 20 and 22, respectively;

(d) Article 65(6) for operations that started from 1 February 2020 and that foster crisis repair in the context of the COVID-19 pandemic and its social consequences and prepare a green, digital and resilient recovery of the economy supported under the thematic objective referred to in the first subparagraph of paragraph 9 of this Article;

(e) requirements to prepare a communication strategy, by way of derogation from Article 116 and point (a) of Article 115(1).

By way of derogation from the requirements set out in Article 12(4) of Regulation (EU) No 1299/2013 for operations supported by the REACT-EU resources under the European territorial cooperation goal, cooperation of beneficiaries in at least two fields shall be sufficient.

14. While carrying out their responsibilities linked to information, communication and visibility in accordance with Article 115(1) and (3) and with Annex XII, Member States and managing authorities shall ensure that potential beneficiaries, beneficiaries, participants, final recipients of financial instruments and the general public are aware of the existence, volume and additional support stemming from the REACT-EU resources.

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The Member States and managing authorities shall make clear to citizens that the operation in question is funded as part of the Union's response to the COVID-19 pandemic and shall ensure full transparency, using, where appropriate, social media.

The references to the 'Fund', 'Funds' or 'ESI Funds' in Section 2.2 of Annex XII shall be complemented by a reference to 'funded as part of the Union's response to the COVID-19 pandemic', where financial support is provided to operations from the REACT-EU resources.

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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.

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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 ([1]);

(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.

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.

([1]) 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).

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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;

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(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;

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(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.

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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;

►C1 (b) the indicative amount of the ERDF support for integrated actions for sustainable urban development, to be implemented in accordance with Article 7(4) 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 target groups at highest risk of discrimination 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.

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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;

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(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).

▼M16

10. Without prejudice to Article 30(5), (6) and (7), the Commission shall adopt a decision, by means of an implementing act, 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.

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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.

▼M6

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 rules applied to that Fund, provided that such costs are necessary for the satisfactory implementation of the operation and are directly linked to it.

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

▼M14

4. Operations addressing the migratory challenges as a result of the military aggression by the Russian Federation may be financed either by the ERDF or the ESF on the basis of the rules applicable to the other Fund.

▼M16

In addition, such operations may also be financed by the Cohesion Fund on the basis of rules applicable either to the ERDF or the ESF.

▼M14

In such cases, those operations shall be programmed under a dedicated priority axis of that other Fund contributing to its corresponding investment priorities.

▼M16

Where a dedicated priority axis makes use of the possibility set out in the first and second subparagraph, at least 30 % of the financial allocation of that priority axis shall be attributed to operations which have beneficiaries that are local authorities or civil society organisations operating in local communities, or both. Member States shall report on the fulfilment of that condition in the final implementation report required under Article 50(1) and Article 111. Where that condition is not fulfilled, reimbursement by the Commission under the priority axis concerned shall be reduced proportionately to ensure that that condition is respected when calculating the final balance to be paid to the programme.

Where data on participants is required to be reported for operations under the priority axis referred to in the third subparagraph, that data shall be based on informed estimates and shall be limited to the total number of supported persons and the number of children under 18 years of age. The same reporting requirements shall also apply to other priority axes supported by the ESF which are only supporting operations addressing migratory challenges as a result of the military aggression by the Russian Federation.

▼M14

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

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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;

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(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.

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).

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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:

(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 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.

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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.

▼M6

6. Expenditure relating to a major project may be included in a payment application 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 withdrawal of the application by the Member State or the adoption of the Commission decision shall be rectified accordingly.

7. Where the major project is appraised by independent experts pursuant to paragraph 1 of this Article, expenditure relating to that major project may be included in a payment application after the managing authority has informed the Commission of the submission to the independent experts of the information required under Article 101.

An independent quality review shall be delivered within six months of the submission of that information to the independent experts.

The corresponding expenditure shall be withdrawn and the declaration of expenditure shall be rectified accordingly in the following cases:

(a) where the independent quality review has not been notified to the Commission within three months of the expiry of the deadline referred to in the second subparagraph;

(b) where the submission of the information is withdrawn by the Member State; or

(c) where the relevant appraisal is negative.

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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;

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(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.

▼M6

2. The public expenditure allocated to a joint action plan shall be a minimum of EUR 5 000 000 or 5 % of the public support of the operational programme or one of the contributing programmes, whichever is lower.

3. Paragraph 2 shall not apply to operations supported under the YEI, to the first joint action plan submitted by a Member State under the Investment for growth and jobs goal or the first joint action plan submitted by a programme under the European territorial cooperation goal.

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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. ►M6 ——————— ◄

Article 106

Content of joint action plans

A joint action plan shall contain:

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(1) a description of the objectives of the joint action plan and how it contributes to the objectives of the programme or to 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;

———————

(3) a description of the projects or types of projects envisaged, together with the milestones, where relevant, and the targets for outputs and results linked to the common indicators by priority axis, where relevant;

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(4) information on its geographic coverage and target groups;

(5) its expected implementation period;

▼M6

(6) confirmation that it will contribute to the approach to promoting equality between men and women, as set out in the relevant programme or Partnership Agreement;

(7) confirmation that it will contribute to the approach on sustainable development, as set out in the relevant programme or Partnership Agreement;

(8) its implementing provisions, including the following:

(a) information on the selection of the joint action plan by the managing authority in accordance with Article 125(3);

(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;

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(9) its financial arrangements, including the following:

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(a) the costs of achieving milestones, and targets for outputs and results, based, in the case of standard scales of unit costs and lump sums, on the methods set out in Article 67(5) of this Regulation and in Article 14 of the ESF Regulation;

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(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.

▼M6

3. The decision referred to in paragraph 2 shall indicate the beneficiary and the objectives of the joint action plan, the milestones, where relevant, and targets for outputs and results, the costs of achieving those milestones and targets for outputs and result, 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.

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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.

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Article 108

Steering committee and amendment of the joint action plan

▼M6

1. The Member State or the managing authority shall set up a steering committee for the joint action plan, which may be 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. Where relevant, 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).

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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. ►M6 ——————— ◄

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.

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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;

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(c) implementation of the communication strategy, including information and communication measures, and of measures to enhance the visibility of the Funds;

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(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:

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(a) the methodology and criteria used for selection of operations, except where those criteria are approved by local action groups in accordance with point (c) of Article 34(3);

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(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.

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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;

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(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, ►C1 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(4), the information required by Article 50(5) ◄ 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).

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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

▼M6

1. An evaluation plan shall be drawn up by the managing authority or a 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. In the cases of dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) adopted before 2 August 2018, the evaluation plan shall be submitted to the monitoring committee no later than one year after that date.

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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 co-operation with the Member States and managing authorities.

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CHAPTER II

▼M6

Information, communication and visibility

▼B

Article 115

▼M6

Information, communication and visibility

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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;

▼M6

(d) publicising to Union citizens the role and achievements of cohesion policy and of the Funds through measures to enhance the visibility of the results and impact of Partnership Agreements, operational programmes and operations.

▼B

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.

▼M6

3. Detailed rules concerning information, communication and visibility for the public and information measures for potential beneficiaries and for beneficiaries are laid down in Annex XII.

▼B

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).

▼B

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).

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3. By way of derogation from the third subparagraph of paragraph 2 of this Article, 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 of that implementation as well as on the information and communication activities and measures to enhance visibility of the Funds that are planned for the following year. The monitoring committee shall give an opinion on the activities and measures planned for the following year, including on ways to increase the effectiveness of communication activities aimed at the public.

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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.

▼B

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.

▼M6

4. Union networks comprising the members designated by 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, the exchange of good practices, and to enable joint planning or coordination of communication activities between the Member States and with the Commission where appropriate. The networks shall at least once a year debate and assess the effectiveness of the information and communication measures, and propose recommendations to enhance the outreach and impact of communication activities and to raise awareness about the results and added value of those activities.

▼B

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

▼M6

1. The amount of the Funds allocated to technical assistance in a Member State shall be limited to 4 % of the total amount of the Funds allocated to operational programmes under the Investment for growth and jobs goal.

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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. ►M6 ——————— ◄ 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.

▼M6

4. In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations altogether 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 either the respective allocations to the different categories of regions of the operational programme or the allocation under each category of region as a share of the total allocation to the Member State.

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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.

▼M6

5a. The assessment of the respect of the percentages shall be carried out at the time of adoption of the operational programme.

▼B

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;

▼B

(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).

▼M2

For the period from 1 January 2014 until closure of the operational programme the co-financing rate at the level of each priority axis for all operational programmes in Cyprus shall not be higher than 85 %.

▼B

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.

▼M4

8. A separate priority axis with a co-financing rate of up to 95 % may be established within an operational programme to support operations which fulfil all of the following conditions:

▼M4

(a) the operations are selected by managing authorities in response to major or regional natural disasters as defined in Article 2(2) and (3) of Council Regulation (EC) No 2012/2002 ([1]);

(b) the operations are aimed at reconstruction in response to the natural disaster; and

(c) the operations are supported under an ERDF investment priority.

The amount allocated to the operations referred to in the first subparagraph shall not exceed 5 % of the total ERDF allocation in a Member State for the 2014-2020 programming period.

By way of derogation from Article 65(9), expenditure for operations under this priority axis shall be eligible from the date when the natural disaster occurred.

Where expenditure in relation to operations referred to in the first subparagraph has been included in a payment application submitted to the Commission before the establishment of the separate priority axis, the Member State shall make the necessary adjustments to the next payment application and, where appropriate, to the next accounts submitted following the adoption of the amendment to the programme.

▼M16

9. A separate priority axis promoting the socioeconomic integration of third country nationals with a co-financing rate of up to 100 % may be established within an operational programme. Such a priority axis may be entirely dedicated to operations addressing migratory challenges as a result of the military aggression by the Russian Federation, including the dedicated priority axis referred to in the third subparagraph of Article 98(4).

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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.

([1]) Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3).

▼B

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. ►C1 They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from any of the Funds or the EMFF, 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;

▼C1

(c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a payment application submitted to the Commission.

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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.

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When amounts unduly paid to a beneficiary for an operation cannot be recovered and this is as a result of fault or negligence on the part of a Member State, that 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 to an operation in an accounting year.

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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.

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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.

▼M6

5. In the case of the Funds 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.

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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

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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 ([1]), of their effective functioning during that period, it may conclude that the relevant criteria are fulfilled without carrying out additional audit work.

([1]) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).

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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).

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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;

(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;

▼C1

(b) ensure that a selected operation falls within the scope of the EMFF, 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;

▼M6

(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, the time limit for execution, as well as the requirements regarding information, communication and visibility;

▼B

(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;

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(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:

▼M6

(a) verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the operational programme and the conditions for support of the operation and:

(i) where costs are to be reimbursed pursuant to point (a) of the first subparagraph of Article 67(1), that the amount of expenditure declared by the beneficiaries in relation to those costs has been paid;

(ii) in the case of costs reimbursed pursuant to points (b) to (e) of the first subparagraph of Article 67(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;

▼B

(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 ►M6 points (a) and (b) of Article 63(5) and Article 63(6) and (7) 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.

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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 ►**M6** point (a) of Article 63(5) and Article 63(6) 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;

▼B

(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. ►C1 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 payment application. ◄

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 ►M6 Article 63(7) 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

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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 ►M6 Article 63(7) 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.

▼B

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

▼C1

FINANCIAL MANAGEMENT, PREPARATION, EXAMINATION AND ACCEPTANCE OF ACCOUNTS AND FINANCIAL CORRECTIONS

▼B

CHAPTER I

Financial management

Article 129

Common rules for payments

The Member State shall ensure that by the closure of the operational programme, ►C1 the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds and the EMFF 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.

▼C1

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 applications 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,

whichever is the lower.

▼M18

3. By way of derogation from paragraph 2, the contribution from the Funds or the EMFF through payments of the final balance for each priority per Fund and per category of regions in the final accounting year shall not exceed, by more than 15 %, the contribution from the Funds or the EMFF for each priority per Fund and per category of regions as laid down in the decision of the Commission approving the operational programme. For the purposes of this paragraph, the additional special allocation for the outermost regions set out in Article 92(1), point (e), shall be considered part of the ERDF allocation to the category of regions of the outermost region concerned.

▼M10

The contribution from the Funds or the EMFF through payments of the final balance in the final accounting year shall not exceed the eligible public expenditure declared or the contribution from each Fund and category of regions to each operational programme as laid down in the decision of the Commission approving the operational programme, whichever is the lower.

▼M6

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.

With regard to the amounts to be included in payment applications for the form of support referred to in point (e) of the first subparagraph of Article 67(1), the payment applications shall include the elements set out in the delegated acts adopted in accordance with Article 67(5a) and shall use the model for payment applications set out in the implementing acts adopted in accordance with paragraph 6 of this Article.

▼M15

2. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for the forms of support referred to in points (b) to (e) of the first subparagraph of Article 67(1), Articles 68, 68a, 68b and 68c, Article 69(1) and Article 109 of this Regulation, and in 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.

▼M6

3. In the case of State aid, 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 or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, paid by the beneficiary to the body receiving the aid.

4. By way of derogation from paragraph 1 of this Article, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, paid by the beneficiary to the body receiving 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 are 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 or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, of the total amount of the aid to be granted to the body receiving the aid as part of a given operation;

▼M6

(c) those advances are covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, expenditure paid by the body receiving the aid in implementing the operation, and supported by receipted invoices or accounting documents of equivalent probative value within three years of the year of the payment of the advance or on 31 December 2023, whichever is earlier.

Where the conditions set out in point (c) of the first subparagraph are not met, the next payment application shall be corrected accordingly.

5. Each payment application which includes advances of the type referred to in paragraph 4 of this Article shall separately disclose:

(a) the total amount paid from the operational programme as advances;

(b) the amount which, within three years of the payment of the advance in accordance with point (c) of the first subparagraph of paragraph 4, has been covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, by the body receiving the aid; and

(c) the amount which has not been covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, by the body receiving the aid, 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. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

▼B

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.

▼B

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.

▼M1

1a. In addition to the instalments provided for in points (b) and (c) of paragraph 1, an additional initial pre-financing amount of 3,5 % of the amount of support from the Funds and the EMFF for the entire programming period shall be paid to operational programmes in Greece each year in 2015 and 2016.

The additional initial pre-financing shall not apply to programmes under the European territorial cooperation goal nor to the specific allocation for the Youth Employment Initiative.

▼M1

If, by 31 December 2016, the total amount of the additional initial pre-financing paid on the basis of this paragraph in 2015 and 2016 to an operational programme by Fund, where applicable, is not covered by payment applications submitted by the certifying authority for that programme, Greece shall repay to the Commission the total amount of the additional initial pre-financing for that Fund paid to that programme. Those repayments shall not constitute a financial correction and shall not reduce support from the Funds or the EMFF to the operational programmes. The amounts repaid shall constitute internal assigned revenue in accordance with point (c) of Article 21(3) of the Financial Regulation.

▼B

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 %

▼M12

— 2020: 3 %

— 2021 to 2023: 2 %.

▼B

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.

▼B

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.

▼M18

6. By way of derogation from paragraph 2, the deadline for the submission of the final application for an interim payment for the final accounting year shall be 31 July 2025. The last application for interim payment submitted by 31 July 2025 shall be deemed to be the final application for an interim payment for the final accounting year.

Amounts from resources other than REACT-EU reimbursed by the Commission as interim payments in 2025 shall not exceed 1 % of the total financial appropriations to the programme concerned by Fund, REACT-EU resources excluded. Amounts that would be due to be paid by the Commission in 2025 exceeding this percentage shall not be paid and shall be used exclusively for the clearing of pre-financing at closure.

▼B

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 ►**M6** point (a) of Article 63(5) and Article 63(6) 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:

▼B

(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 ►M6 Article 63(5), and the second subparagraph of Article 63(7), 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.

▼M18

By way of derogation from the deadline set out in the first subparagraph, Member States may submit the documents referred to under points (a), (b) and (c) for the final accounting year by 15 February 2026.

▼B

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).

▼B

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. ►C1 Such recovery shall not constitute a financial correction and shall not reduce support from the Funds and the EMFF to the operational programme. ◄ The amount recovered shall constitute assigned revenue in accordance with Article 177(3) of the Financial Regulation.

▼M9

By way of derogation from the first subparagraph, the Commission shall not issue a recovery order for amounts recoverable from the Member State for the accounts submitted in 2020. Amounts not recovered shall be used to accelerate investments related to the COVID-19 outbreak and eligible under this Regulation and Fund-specific rules.

The amounts not recovered shall be cleared or recovered at closure.

▼B

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, ►C1 the amount chargeable to the Funds and the EMFF 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 and the EMFF for the accounting year. Such decision shall not constitute a financial correction and shall not reduce support from the Funds and the EMFF 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, ►C1 the managing authority shall ensure that all supporting documents regarding expenditure supported by the Funds and the EMFF 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.

▼B

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.

▼C1

The time period referred to in the first or second subparagraph shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.

▼B

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. ►M6 Where documents are kept on commonly accepted data carriers in accordance with the procedure laid down in paragraph 5, no originals shall be required. ◄

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.

▼B

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;

▼C1

(b) expenditure in a payment application is linked to an irregularity having serious financial consequences which has not been corrected;

▼B

(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.

▼B

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.
►C1 Financial corrections shall be recorded in the accounts 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.

▼B

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.

▼C1

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 contribution from the Funds or the EMFF to the Member State concerned.

▼B

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.

▼C1

5. In the event of an agreement, and without prejudice to paragraph 7 of this Article, the Member State may reuse the Funds concerned or the EMFF in accordance with Article 143(3).

▼B

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.

▼C1

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 or the EMFF to the operational programme.

▼B

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 ►M6 Article 63(5), (6) and (7) 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 ([1]).

([1]) 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).

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Article 147

Repayment

►C1 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 ►M6 Article 98 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

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1. Operations for which the total eligible expenditure does not exceed EUR 400 000 for the ERDF and the Cohesion Fund, EUR 300 000 for the ESF or EUR 200 000 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.

By derogation from the first subparagraph, operations for which the total eligible expenditure is between EUR 200 000 and EUR 400 000 for the ERDF and the Cohesion Fund, between EUR 150 000 and EUR 300 000 for the ESF and between EUR 100 000 and EUR 200 000 for the EMFF may be subject to more than one audit, if the audit authority concludes, based on its professional judgment, that it is not possible to issue or draw up an audit opinion on the basis of statistical or non-statistical sampling methods referred to in Article 127(1) without carrying out more than one audit of the respective operation.

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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

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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.

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.

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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 39a(7), 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), 64(4) and 67(5a), the second paragraph of Article 68, 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.

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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 39a(7), 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), 64(4) and 67(5a), the second paragraph of Article 68, 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.

3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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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), Articles 39a(7), 40(4) and 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), 64(4) and 67(5a), the second paragraph of Article 68, 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 to 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.

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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.

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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 to carry out the functions of the certifying 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. 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.

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4. By way of derogation from Article 79(1) of Regulation (EC) No 1083/2006, the ceiling for the cumulative total amount of pre-financing and interim payments made shall be 100 % of the contribution from the Funds to operational programmes for the Convergence and Regional competitiveness and employment objectives in Greece.

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5. By way of derogation from Articles 53(2) and 77(1) of Regulation (EC) No 1083/2006 and notwithstanding the Commission decisions fixing the maximum rate and the maximum amount of the contribution from the Funds for each Greek operational programme and for each priority axis, interim payments and payments of the final balance shall be calculated by applying a maximum co-financing rate of 100 % to the eligible expenditure indicated for Greek operational programmes for the Convergence and Regional competitiveness and employment objectives under each priority axis in each statement of expenditure certified by the certifying authority. Article 77(2) of Regulation (EC) No 1083/2006 shall not apply to operational programmes in Greece.

6. Greece shall establish a mechanism to ensure that the additional amounts made available as a result of the measures set out in paragraphs 4 and 5 of this Article are used solely for payments to beneficiaries and operations for its operational programmes.

Greece shall submit a report to the Commission on the implementation of paragraphs 4 and 5 of this Article by the end of 2016 and shall further report in the final implementation report to be submitted pursuant to point (a) of Article 89(1) of Regulation (EC) No 1083/2006.

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7. The managing authority, or the monitoring committee for the programmes under the European territorial cooperation goal, may decide not to apply Article 67(2a) for a maximum period of 12 months starting from 2 August 2018.

Where the managing authority, or the monitoring committee for the programmes under the European territorial cooperation goal, considers that Article 67(2a) creates a disproportionate administrative burden, it may decide to extend the transitional period referred to in the first subparagraph of this paragraph for a period it considers appropriate. It shall notify the Commission of such decision before the expiration of the initial transitional period.

The first and second subparagraphs do not apply to grants and repayable assistance supported by the ESF for which the public support does not exceed EUR 50 000.

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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*.

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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.

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Articles 92a and 92b shall not apply to or in the United Kingdom. References to Member States in those provisions shall be understood as not including the United Kingdom.

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This Regulation shall be binding in its entirety and directly applicable in all Member States.

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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.

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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;

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(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

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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.

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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 ([1]), 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:

   (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;

([1]) 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).

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(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 Sklodowska-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 ([1])

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.

4.5 Programme for the Environment and Climate Action (LIFE) ([2]) 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.

([1]) 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_2 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).

([2]) 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).

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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 + ([1])

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) ([2])

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) ([3])

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

([1]) 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).

([2]) 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).

([3]) 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).

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different types of infrastructure at local, regional and national levels, and across the Union. 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.

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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.

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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 ([1]), 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 ([2]). Expenditure related to biodiversity and the protection of natural resources shall be consistent with Council Directive 92/43/EEC ([3]).

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.

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

([1]) 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).

([2]) 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).

([3]) 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).

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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.

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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;

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(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

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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.

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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	►C1 Indicator or, where appropriate, key implementation step and measurement unit ◄		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:

   (a) realistic, achievable, relevant, capturing essential information on the progress of a priority;

   (b) consistent with the nature and character of the specific objectives of the priority;

   (c) transparent, with objectively verifiable targets and the source data identified and, where possible, publicly available;

   (d) verifiable, without imposing a disproportionate administrative burden;

   (e) 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.

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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.

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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 YEI. 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

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1. Where a financial instrument is implemented under Article 39a and points (a), (b) and (c) of the first subparagraph 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:

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(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;

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(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) and the second subparagraph of Article 39a(5);

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(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;

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(i) provisions regarding the re-use of resources attributable to the support from the ESI Funds until the end of the eligibility period in compliance with Article 44 and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a;

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(j) provisions regarding the re-use of resources attributable to the support of the ESI Funds after the end of the eligibility period in compliance with Article 45 and a policy regarding the exit of those resources from the financial instrument;

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(k) conditions for a possible total or partial withdrawal of programme contributions from programmes to financial instruments, including the fund of funds where applicable;

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(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.

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2. Strategy documents referred to under Article 38(8) for financial instruments implemented under point (d) of the first subparagraph of Article 38(4) shall include at least the following elements:

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(a) the investment strategy or policy of the financial instrument, general terms and conditions of envisaged loan or guarantees, target final recipients and actions to be supported;

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(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);

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(c) the use and re-use of resources attributable to the support of the ESI Funds in accordance with Articles 43, 44 and 45, and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a;

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(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 %

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ANNEX VI

ANNUAL BREAKDOWN OF COMMITMENT APPROPRIATIONS FOR THE YEARS 2014 TO 2020

Adjusted annual profile (including the YEI top-up)

	2014	2015	2016	2017	2018	2019	2020	Total
EUR, 2011 prices	34 108 069 924	55 725 174 682	46 044 910 736	48 027 317 164	48 341 984 652	48 811 933 191	49 046 236 960	330 105 627 309

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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;

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(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^2 (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

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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 %.

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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 EU 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;

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(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 VIIa

METHODOLOGY FOR THE ALLOCATION OF THE REACT-EU RESOURCES – ARTICLE 92b(4)

Allocation method for the REACT-EU resources

The REACT-EU resources shall be distributed between the Member States according to the following methodology:

1. Each Member State's provisional share from the REACT-EU resources is determined as the weighted sum of the shares determined on the basis of the following criteria, weighted as indicated:

   (a) A factor of GDP (weighting of 2/3) obtained by applying the following steps:

      (i) share of each Member State of the total loss of real seasonally adjusted GDP expressed in EUR between the first semester of 2019 and the end of the applicable reference period for all Member States considered;

      (ii) adjustment of the shares obtained under point (i) by dividing them with the Member State's GNI per capita expressed as a percentage of the average GNI per capita of the EU-27 (average expressed as 100 %).

   (b) A factor of unemployment (weighting of 2/9) expressed as the weighted average of:

      (i) the share of the Member State in the total number of unemployed (weighting of 3/4) for all Member States considered in January 2020; and

      (ii) the share of the Member State in the total increase in the number of persons unemployed (weighting of 1/4) between January 2020 and the end of the applicable reference period for all Member States considered.

   (c) A factor of youth unemployment (weighting of 1/9) expressed as the average of:

      (i) the share of the Member State in the total number of young persons unemployed (weighting of 3/4) for all Member States considered in January 2020; and

      (ii) the share of the Member State in the total increase in the number of young persons unemployed (weighting of 1/4) between January 2020 and the applicable reference period for all Member States considered.

   If the Member State's real seasonally adjusted GDP expressed in EUR for the applicable reference period is higher than in the first semester of 2019, that Member State's data shall be excluded from the calculations in point (a)(i).

   If the number of people unemployed (age group 15 to 74) or young people unemployed (age group 15 to 24) in the Member State for the applicable reference period is lower than in January 2020, that Member State's data shall be excluded from the calculations in points (b)(ii) and (c)(ii).

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2. The rules set out in paragraph 1 shall not result in allocations per Member State for the whole period 2021 to 2022 higher than:

   (a) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is above 109 % of the EU-27 average: 0,07 % of their real GDP of 2019;

   (b) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is equal to or below 90 % of the EU-27 average: 2,60 % of their real GDP of 2019;

   (c) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is above 90 % and equal to or below 109 % of the EU-27 average: the percentage is obtained through a linear interpolation between 0,07 % and 2,60 % of their real GDP of 2019 leading to a proportional reduction of the capping percentage in line with the increase in prosperity.

   The amounts exceeding the level set out in points (a) to (c) per Member State are redistributed proportionally to the allocations of all other Member States whose average GNI per capita (in PPS) is under 100 % of the EU-27 average. The GNI per capita (in PPS) for the period 2015-2017 is the one used for cohesion policy in the MFF 2021-2027 negotiations.

3. For the purposes of calculating the distribution of the REACT-EU resources for the year 2021:

   (a) for the GDP the reference period shall be the first semester of 2020;

   (b) for the number of people unemployed and the number of young people unemployed the reference period shall be the average of June to August 2020;

   (c) the maximum allocation resulting from the application of paragraph 2 is multiplied by the share of the REACT-EU resources for the year 2021 in the total REACT-EU resources for the years 2021 and 2022.

   Before the application of the method described in paragraphs 1 and 2 concerning the REACT-EU resources for the year 2021, an amount of EUR 100 000 000 and EUR 50 000 000 shall be allocated to Luxembourg and Malta, respectively.

   In addition, an amount corresponding to an aid intensity of EUR 30 per inhabitant shall be allocated to the outermost NUTS level 2 regions from the allocation. That allocation will be distributed per region and Member State in a manner proportional to the total population of those regions. The additional allocation for the outermost regions shall be added to the allocation that every outermost region receives through the distribution of the national budget.

   The remaining amount for the year 2021 shall be distributed among Member States in accordance with the method described in paragraphs 1 and 2.

4. For the purposes of calculating the distribution of the REACT-EU resources for the year 2022:

   (a) for GDP the reference period shall be the first semester of 2021;

   (b) for the number of people unemployed and the number of young people unemployed the reference period shall be the average of June to August 2021;

   (c) the maximum allocation resulting from the application of paragraph 2 is multiplied by the share of the REACT-EU resources for the year 2022 in the total REACT-EU resources for the years 2021 and 2022.

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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

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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
1. Strengthening research, technological development and innovation (R&D target) (referred to in point (1) of the first paragraph of Article 9)	ERDF: — All investment priorities under thematic objective no. 1.	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&I systems.	— A national or regional smart specialisation strategy is in place that: — is based on a SWOT or similar analysis to concentrate resources on a limited set of research and innovation priorities; — outlines measures to stimulate private RTD investment; — contains a monitoring mechanism. — A framework outlining available budgetary resources for research and innovation has been adopted.
	ERDF: — Enhancing research and innovation (R&I) infrastructure and capacities to develop R&I excellence, and promoting centres of competence, in particular those of European interest.	1.2 Research and Innovation infrastructure. The existence of a multi-annual plan for budgeting and prioritisation of investments.	— 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.
2. Enhancing access to, and use and quality of, information and communication technologies (ICT) (Broadband target) (referred to in point (2) of the first paragraph of Article 9)	ERDF: — Developing ICT products and services, e-commerce, and enhancing demand for ICT.	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	— A strategic policy framework for digital growth, for instance, within the national or regional smart specialisation strategy is in place that contains:

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	— Strengthening ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health.	citizens, including vulnerable groups, businesses and public administrations including cross border initiatives.	— budgeting and prioritisation of actions through a SWOT or similar analysis consistent with the Scoreboard of the Digital Agenda for Europe; — an analysis of balancing support for demand and supply of ICT should have been conducted; — 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; — assessment of needs to reinforce ICT capacity-building.
	ERDF: — Extending broadband deployment and the roll-out of high-speed networks and supporting the adoption of emerging technologies and networks for the digital economy.	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.	— A national or regional NGN Plan is in place that contains: — a plan of infrastructure investments based on an economic analysis taking account of existing private and public infrastructures and planned investments; — sustainable investment models that enhance competition and provide

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			access to open, affordable, quality and future-proof infrastructure and services; — measures to stimulate private investment.
3. Enhancing the competitiveness of small and medium-sized enterprises (SMEs) (referred to in point (3) of the first paragraph of Article 9)	ERDF: — Promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms, including through business incubators. — Supporting the capacity of SMEs to grow in regional, national and international market, and to engage in innovation processes.	3.1. Specific actions have been carried out to underpin the promotion of entrepreneurship taking into account the Small Business Act (SBA).	— The specific actions are: — 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; — 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; — 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.
4. Supporting the shift towards a low-carbon economy in all sectors (referred to in point (4) of the first paragraph of Article 9)	ERDF + Cohesion Fund: — Supporting energy efficiency, smart energy management and renewable energy use in public infrastructure, including in public buildings, and in the housing sector.	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.	— The actions are: — 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 [1]; — measures necessary to establish a system of certification of the energy performance of

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			buildings consistent with Article 11 of Directive 2010/31/EU; — 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 (2); — measures consistent with Article 13 of Directive 2006/32/EC of the European Parliament and of the Council (3) 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.
	ERDF + Cohesion Fund: — Promoting the use of high-efficiency co-generation of heat and power based on useful demand.	4.2. Actions have been carried out to promote high-efficiency co-generation of heat and power.	— The actions are: — 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: (a) encourage the design of co-generation units to match economically justifiable demands for

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			useful heat output and avoid production of more heat than useful heat; and (b) reduce the regulatory and non-regulatory barriers to an increase in co-generation.
	ERDF + Cohesion Fund: — Promoting the production and distribution of energy derived from renewable sources.	4.3. Actions have been carried out to promote the production and distribution of renewable energy sources ([4]).	— 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 ([4]). — A Member State has adopted a national renewable energy action plan consistent with Article 4 of Directive 2009/28/EC.
5. Promoting climate change adaptation, risk prevention and management (Climate change target) (referred to in point (5) of the first paragraph of Article 9)	ERDF + Cohesion Fund: — Promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems.	5.1. Risk prevention and risk management: the existence of national or regional risk assessments for disaster management. taking into account climate change adaptation	— A national or regional risk assessment with the following elements shall be in place: — 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;

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			— a description of single-risk and multi-risk scenarios; — taking into account, where appropriate, national climate change adaptation strategies.
6. Preserving and protecting the environment and promoting resource efficiency (referred to in point (6) of the first paragraph of Article 9)	ERDF + Cohesion Fund: — 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.	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.	— 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. — The adoption of a river basin management plan for the river basin district consistent with Article 13 of Directive 2000/60/EC
	ERDF + Cohesion Fund: — 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.	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.	— 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. — The existence of one or more waste management plans as required under Article 28 of Directive 2008/98/EC; — The existence of waste prevention programmes, as required under Article 29 of Directive 2008/98/EC;

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			— 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.
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in point (7) of the first paragraph of Article 9)	ERDF + Cohesion Fund: — Supporting a multimodal Single European Transport Area by investing in the TEN-T. — Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures. — 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. ERDF: — Enhancing regional mobility by connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.	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.	— 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: — 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 [5], including priorities for investments in: — the core TEN-T network and the comprehensive network where investment from the ERDF and the Cohesion Fund is envisaged; and — secondary connectivity; — a realistic and mature pipeline for projects for which support from the ERDF and the Cohesion Fund is envisaged; — Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.
	ERDF + Cohesion Fund: — Supporting a multimodal Single European Transport Area by investing in the TEN-T.	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	— 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

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	— Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures. — 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. ERDF: — Enhancing regional mobility by connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.	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.	legal requirements for strategic environmental assessment (SEA) and sets out a realistic and mature project pipeline (including a timetable and budgetary framework); — Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.
	ERDF + Cohesion Fund: — Supporting a multimodal Single European Transport Area by investing in the TEN-T. — Developing and rehabilitating comprehensive, high quality and interoperable railway systems, and promoting noise-reduction measures.	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.	— 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: — complies with legal requirements for strategic environmental assessment; — sets out a realistic and mature project pipeline (including a timetable and budgetary framework);

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	— 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. ERDF: — Enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure, including multimodal nodes.		— Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.
	ERDF: — 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.	7.4 Development of smart energy distribution, storage and transmission systems. 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	— Comprehensive plans describing the national energy infrastructure priorities are in place that are: — in accordance with Article 22 of Directive 2009/72/EC and of Directive 2009/73/EC, where applicable, and — 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 ([6]) and with Regulation (EC) No 715/2009 of the European Parliament and of the Council ([7]), and — compatible with Article 3(4) of Regulation (EU) No 347/2013 of the European Parliament and of the Council ([8]);.

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			— Those plans shall contain: — a realistic and mature project pipeline for projects for which support from the ERDF is envisaged; — 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; — 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.
8. Promoting sustainable and quality employment and supporting labour mobility (Employment target) (referred to in point (8) of the first paragraph of Article 9)	ESF: — 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.	8.1. Active labour market policies are designed and delivered in the light of the Employment guidelines.	— Employment services have the capacity to, and do, deliver: — 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; — comprehensive and transparent information on new job vacancies and employment opportunities taking into account the changing needs of the labour market.

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
			— Employment services have set up formal or informal cooperation arrangements with relevant stakeholders.
	ESF: — Self employment, entrepreneurship and business creation including innovative micro, small and medium-sized enterprises. ERDF: — Supporting the development of business incubators and investment support for self-employment, micro-enterprises and business creation.	8.2. Self-employment, entrepreneurship and business creation: the existence of a strategic policy framework for inclusive start-up.	— A strategic policy framework for inclusive start-up support is in place with the following elements: — 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; — 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; — actions linking suitable business development services and financial services (access to capital), including reaching out to disadvantaged groups, areas, or both, where needed.
	ESF: — 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.	8.3. Labour market institutions are modernised and strengthened in the light of the Employment Guidelines; 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	— Actions to reform employment services, aiming at providing them with the capacity to deliver: — personalised services and active and preventive labour market measures at an early stage, which are open to all jobseekers while focusing on people at

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	ERDF: — Investing in infrastructure for employment services.		highest risk of social exclusion, including people from marginalised communities; — comprehensive and transparent information on new job vacancies and employment opportunities taking into account the changing needs of the labour market. — Reform of employment services will include the creation of formal or informal cooperation networks with relevant stakeholders.
	ESF: — Active and healthy ageing.	8.4. Active and healthy ageing: Active ageing policies are designed in the light of the Employment Guidelines	— 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; — A Member State has measures in place to promote active ageing.
	ESF: — Adaptation of workers, enterprises and entrepreneurs to change.	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.	— Instruments are in place to support social partners and public authorities to develop and monitor proactive approaches towards change and restructuring which include measures: — to promote anticipation of change; — to promote the preparation and management of the restructuring process.
	ESF: — 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	8.6. The existence of a strategic policy framework for promoting youth employment including through the implementation of the Youth Guarantee. This ex ante conditionality applies only for implementation of the YEI	— A strategic policy framework for promoting youth employment is in place that: — is based on evidence that measures the results for young people not in employment, education or training and that

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	marginalised communities, including through the implementation of the Youth Guarantee.		represents a base to develop targeted policies and monitor developments; — identifies the relevant public authority in charge of managing youth employment measures and coordinating partnerships across all levels and sectors; — involves stakeholders that are relevant for addressing youth unemployment; — allows early intervention and activation; — 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.
9. Promoting social inclusion, combating poverty and any discrimination (poverty target) (referred to in point (9) of the first paragraph of Article 9)	ESF: — Active inclusion, including with a view to promoting equal opportunities and active participation, and improving employability. ERDF: — 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	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.	— A national strategic policy framework for poverty reduction, aiming at active inclusion, is in place that: — provides a sufficient evidence base to develop policies for poverty reduction and monitor developments; — 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

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	social, cultural and recreational services and the transition from institutional to community-based services. — Providing support for physical, economic and social regeneration of deprived communities in urban and rural areas.		social exclusion, including people from marginalised communities; — involves relevant stakeholders in combating poverty; — depending on the identified needs, includes measures for the shift from institutional to community based care; — Upon request and where justified, relevant stakeholders will be provided with support for submitting project applications and for implementing and managing the selected projects.
	ESF: — Socio-economic integration of marginalised communities such as the Roma. ERDF: — 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.	9.2. A national Roma inclusion strategic policy framework is in place	— A national Roma inclusion strategic policy framework is in place that: — 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; — identifies where relevant those disadvantaged micro-regions or segregated neighbourhoods, where communities are most deprived, using already available

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	— Providing support for physical, economic and social regeneration of deprived communities in urban and rural areas. — Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.		socio-economic and territorial indicators (i.e. very low educational level, long-term unemployment, etc); — includes strong monitoring methods to evaluate the impact of Roma integration actions and a review mechanism for the adaptation of the strategy; — is designed, implemented and monitored in close cooperation and continuous dialogue with Roma civil society, regional and local authorities. — Upon request and where justified, relevant stakeholders will be provided with support for submitting project applications and for implementing and managing the selected projects.
	ESF: — Enhancing access to affordable, sustainable and high-quality services, including health care and social services of general interest. ERDF: — 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	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.	— A national or regional strategic policy framework for health is in place that contains: — coordinated measures to improve access to health services; — measures to stimulate efficiency in the health sector, through deployment of service delivery models and infrastructure; — a monitoring and review system. — A Member State or region has adopted a framework outlining available budgetary resources on an indicative basis and a cost-effective concentration of

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	services and thetransition from institutional to community-based services.		resources on prioritised needs for health care.
10. Investing in education, training and vocational training for skills and lifelong learning (Education target) (referred to in point (10) of the first paragraph of Article 9)	ESF: — 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. ERDF: — Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.	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.	— A system for collecting and analysing data and information on ESL at relevant levels is in place that: — provides a sufficient evidence-base to develop targeted policies and monitors developments. — A strategic policy framework on ESL is in place that: — is based on evidence; — 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; — involves all policy sectors and stakeholders that are relevant to addressing ESL.
	ESF: — Improving the quality and efficiency of, and access to, tertiary and equivalent education with a view to	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.	— A national or regional strategic policy framework for tertiary education is in place with the following elements: — where necessary, measures to increase

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	increasing participation and attainment levels, especially for disadvantaged groups. ERDF: — Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure.		participation and attainment that: — increase higher education participation among low income groups and other under-represented groups with special regard to disadvantaged people, including people from marginalised communities; — reduce drop-out rates/improve completion rates; — encourage innovative content and programme design; — measures to increase employability and entrepreneurship that: — encourage the development of "transversal skills", including entrepreneurship in relevant higher education programmes; — reduce gender differences in terms of academic and vocational choices.
	ESF: — 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. ERDF: — Investing in education, training and vocational training for skills and	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.	— A national or regional strategic policy framework for lifelong learning is in place that contains measures: — 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;

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	lifelong learning by developing education and training infrastructure.		— 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); — 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); — 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).
	ESF: — Improving the labour market relevance of education and training systems, facilitating the transition from education to work, and strengthening vocational education and	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.	— A national or regional strategic policy framework is in place for increasing the quality and efficiency of VET systems within the

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	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. ERDF: — Investing in education, training and vocational training for skills and lifelong learning by developing education and training infrastructure		limits of Article 165 TFEU which includes measures for the following: — 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	— 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;

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Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
	support of actions under the ESF to strengthen the institutional capacity and the efficiency of public administration. 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 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; — the development of procedures and tools for monitoring and evaluation.

(1) 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).
(2) 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).
(3) 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).
(4) 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).
(5) 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).
(6) 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).
(7) 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).
(8) 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.

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Area	Ex ante conditionality	Criteria for fulfilment
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.
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 ([1])	— 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; — 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; — 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.
4. Public procurement	The existence of arrangements for the effective application of Union public procurement law in the field of the ESI Funds.	— Arrangements for the effective application of Union public procurement rules through appropriate mechanisms; — Arrangements which ensure transparent contract award procedures; — Arrangements for training and dissemination of information for staff involved in the implementation of the ESI funds; — Arrangements to ensure administrative capacity for implementation and application of Union public procurement rules.

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Area	Ex ante conditionality	Criteria for fulfilment
5. State aid	The existence of arrangements for the effective application of Union State aid rules in the field of the ESI Funds.	— Arrangements for the effective application of Union State aid rules; — Arrangements for training and dissemination of information for staff involved in the implementation of the ESI funds; — Arrangements to ensure administrative capacity for implementation and application of Union State aid rules.
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.	— Arrangements for the effective application of Directive 2011/92/EU of the European Parliament and of the Council [2] (EIA) and of Directive 2001/42/EC of the European Parliament and of the Council [3] (SEA); — Arrangements for training and dissemination of information for staff involved in the implementation of the EIA and SEA Directives; — Arrangements to ensure sufficient administrative capacity.
7. Statistical systems and result indicators	The existence of a statistical basis necessary to undertake evaluations to assess the effectiveness and impact of the programmes. 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.	— Arrangements for timely collection and aggregation of statistical data with the following elements are in place: — the identification of sources and mechanisms to ensure statistical validation; — arrangements for publication and public availability of aggregated data; — An effective system of result indicators including: — the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme; — the establishment of targets for these indicators; — the consistency of each indicator with the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data; — Procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators.

[1] 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)

[2] 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).

[3] 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).

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ANNEX XII

▼M6

INFORMATION, COMMUNICATION AND VISIBILITY OF SUPPORT FROM THE FUNDS

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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.

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2. INFORMATION AND COMMUNICATION MEASURES AND MEASURES TO ENHANCE VISIBILITY FOR THE PUBLIC

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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

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1. The Member State and the managing authority shall ensure that the information and communication measures are implemented in accordance with the communication strategy, in order to improve visibility and interaction with citizens, and that those measures aim for the widest possible media coverage using various forms and methods of communication at the appropriate level and adapted, as appropriate, to technological innovation;

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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;

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(e) giving examples of operations, in particular of operations where the added value of the intervention of the Funds is particularly visible, by operational programme, on the single website or on the operational programme's website that is accessible through the single website portal; the examples shall 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 its main achievements and results, on the single website or on the operational programme's website that is accessible through the single website portal.

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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

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1. All information and communication measures and measures to enhance visibility of the Funds provided by the beneficiary shall acknowledge support from the Funds to the operation by displaying:

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(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.

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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.

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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 operation was supported by the Fund or Funds.

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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).

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6. The responsibilities laid down in this subsection shall apply as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in point (c) of Article 125(3).

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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;

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(f) the responsibility of beneficiaries to inform the public about the aim of the operation and the support from the Funds to the operation in accordance with subsection 2.2 as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in point (c) of Article 125(3). The managing authority may request that potential beneficiaries propose indicative communication activities to enhance the visibility of the Funds, proportional to the size of the operation, in the applications.

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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;

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(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;

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(i) an annual update setting out the information and communication activities, including measures to enhance visibility of the Funds, to be carried out in the following year, based on, inter alia, lessons learnt on the effectiveness of such measures.

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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.

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(viii) Procedures to draw up the management declaration referred to in point (a) of Article 59(5) of the Financial Regulation and the annual summary of the final audit reports and of controls carried out, including weaknesses identified, referred to in point (b) of Article 59(5) thereof.

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(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

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Regulation (EC) No 1083/2006	This Regulation
Article 36	Article 31
Article 37	Articles 27 and 96(1) to (8)
Article 38	—
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

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Regulation (EC) No 1083/2006	This Regulation
Article 70	Articles 74 and 122
Article 71	Article 124
Article 72	Article 75
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

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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.