

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

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');
- (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⁽²⁾ and in Council Decision 2010/707/EU⁽³⁾, and any revision of such targets and shared objectives;
- (2) 'a strategic policy framework' means a document or a set of documents established at national or regional level, which sets out a limited number of coherent priorities established on the basis of evidence and a timeframe for the implementation of those priorities and which may include a monitoring mechanism;
- (3) 'smart specialisation strategy' means the national or regional innovation strategies which set priorities in order to build competitive advantage by developing and matching research and innovation own strengths to business needs in order to address emerging opportunities and market developments in a coherent manner, while avoiding duplication and fragmentation of efforts; a smart specialisation strategy may take the form of, or be included in, a national or regional research and innovation (R&I) strategic policy framework;
- (4) 'Fund-specific rules' means the provisions laid down in, or established on the basis of, Part Three or Part Four of this Regulation or a Regulation governing one or more of the ESI Funds listed in the fourth paragraph of Article 1;
- (5) 'programming' means the process of organisation, decision-making and allocation of financial resources in several stages, with the involvement of partners in accordance with Article 5, intended to implement, on a multi-annual basis, joint action by the Union and the Member States to achieve the objectives of the Union strategy for smart, sustainable and inclusive growth;

- (6) 'programme' means an 'operational programme' as referred to in Part Three or Part Four of this Regulation and in the EMFF Regulation, and 'rural development programme' as referred to in the EAFRD Regulation;
- (7) 'programme area' means a geographical area covered by a specific programme or, in the case of a programme covering more than one category of region, the geographical area corresponding to each separate category of region;
- (8) 'priority' in Parts Two and Four of this Regulation means the 'priority axis' referred to in Part Three of this Regulation for ERDF, ESF and the Cohesion Fund and the 'Union priority' referred to in the EMFF Regulation and in the EAFRD Regulation;
- (9) 'operation' means a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities; in the context of financial instruments, an operation is constituted by the financial contributions from a programme to financial instruments and the subsequent financial support provided by those financial instruments;
- (10) 'beneficiary' means a public or private body and, for the purposes of the EAFRD Regulation and of the EMFF Regulation only, a natural person, responsible for initiating or both initiating and implementing operations; and in the context of State aid schemes, as defined in point 13 of this Article, the body which receives the aid; and in the context of financial instruments under Title IV of Part Two of this Regulation, it means the body that implements the financial instrument or the fund of funds as appropriate;
- (11) 'financial instruments' means financial instruments as defined in the Financial Regulation, save where otherwise provided in this Regulation;
- (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;
- (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⁽⁷⁾ 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⁽⁸⁾, regardless of whether the EGTC is considered to be a public law body or a private law body under the relevant national implementing provisions;

- (17) 'document' means a paper or an electronic medium bearing information of relevance in the context of this Regulation;
- (18) 'intermediate body' means any public or private body which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority, in relation to beneficiaries implementing operations;
- (19) 'community-led local development strategy' means a coherent set of operations the purpose of which is to meet local objectives and needs, and which contributes to achieving the Union strategy for smart, sustainable and inclusive growth, and which is designed and implemented by a local action group;
- (20) 'Partnership Agreement' means a document prepared by a Member State with the involvement of partners in line with the multi-level governance approach, which sets out that Member State's strategy, priorities and arrangements for using the ESI Funds in an effective and efficient way so as to pursue the Union strategy for smart, sustainable and inclusive growth, and which is approved by the Commission following assessment and dialogue with the Member State concerned;
- (21) 'category of regions' means the categorisation of regions as 'less developed regions', 'transition regions' or 'more developed regions' in accordance with Article 90(2);
- (22) 'request for payment' means a payment application or declaration of expenditure submitted by the Member State to the Commission;
- (23) 'EIB' means the European Investment Bank, the European Investment Fund or any subsidiary of the European Investment Bank;
- (24) 'Public private partnerships' (PPPs) means forms of cooperation between public bodies and the private sector, which aim to improve the delivery of investments in infrastructure projects or other types of operations, delivering public services through risk sharing, pooling of private sector expertise or additional sources of capital;
- (25) 'PPP operation' means an operation which is implemented or intended to be implemented under a public-private-partnership structure;
- (26) 'escrow account' means a bank account covered by a written agreement between a managing authority or an intermediate body and the body implementing a financial instrument, or, in the case of a PPP operation, a written agreement between a public body beneficiary and the private partner approved by the managing authority or an intermediate body, set up specifically to hold funds to be paid out after the eligibility period, exclusively for the purposes provided for in point (c) of Article 42(1), Article 42(2), Article 42(3) and Article 64, or a bank account set up on terms providing equivalent guarantees on the payments out of the funds;
- (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⁽⁹⁾;
- (29) 'accounting year', means, for the purposes of Part Three and Part Four, the period from 1 July to 30 June, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure

until 30 June 2015. The final accounting year shall be from 1 July 2023 to 30 June 2024;

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

Article 3

Calculation of time limits for Commission decisions

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

PART TWO

COMMON PROVISIONS APPLICABLE TO THE ESI FUNDS

TITLE I

PRINCIPLES OF UNION SUPPORT FOR THE ESI FUNDS

Article 4

General principles

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

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

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

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

5 Arrangements for the implementation and use of the ESI Funds, and in particular the financial and administrative resources required for the preparation and implementation of programmes, in relation to monitoring, reporting, evaluation, management and control, shall respect the principle of proportionality having regard to the level of support allocated and shall

take into account the overall aim of reducing the administrative burden on bodies involved in the management and control of the programmes.

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

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

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

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

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

Article 5

Partnership and multi-level governance

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

- a competent urban and other public authorities;
- b economic and social partners; and
- c relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

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

3 The Commission shall be empowered to adopt a delegated act in accordance with Article 149 to provide for a European code of conduct on partnership (the 'code of conduct') in order to support and facilitate Member States in the organisation of partnership in accordance with paragraphs 1 and 2 of this Article. The code of conduct shall set out the framework within which the Member States, in accordance with their institutional and legal framework as well as their national and regional competences, shall pursue the implementation of partnership. The code of conduct, while fully respecting the principles of subsidiarity and proportionality, shall lay down the following elements:

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

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

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

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

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

Article 6

Compliance with Union and national law

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

Article 7

Promotion of equality between men and women and non-discrimination

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

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

Article 8

Sustainable development

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

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

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

TITLE II

STRATEGIC APPROACH

CHAPTER I

*Thematic objectives for the ESI Funds and Common Strategic Framework**Article 9***Thematic objectives**

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

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

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

*Article 10***Common Strategic Framework**

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

strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges of the various types of territories.

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

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

Article 11

Content

The CSF shall establish:

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

Article 12

Review

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

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

Article 13

Guidance for beneficiaries

1 The Commission shall prepare guidance on how to effectively access and use the ESI Funds, and on how to exploit complementarities with other instruments of relevant Union policies.

2 The guidance shall be drawn up by 30 June 2014 and shall provide, for each thematic objective, an overview of the available relevant instruments at Union level with detailed sources of information, examples of good practices for combining available funding instruments within and across policy areas, a description of relevant authorities and bodies involved in the management of each instrument, a checklist for potential beneficiaries to help them to identify the most appropriate funding sources.

3 The guidance shall be made public on the websites of the relevant Directorate Generals of the Commission. The Commission and managing authorities, acting in accordance with the Fund-specific rules, and in cooperation with the Committee of the Regions, shall ensure dissemination of the guidance to potential beneficiaries.

CHAPTER II

Partnership Agreement

Article 14

Preparation of the Partnership Agreement

1 Each Member State shall prepare a Partnership Agreement for the period from 1 January 2014 to 31 December 2020.

2 The Partnership Agreement shall be drawn up by Member States in cooperation with the partners referred to in Article 5. The Partnership Agreement shall be prepared in dialogue with the Commission. The Member States shall draw up the Partnership Agreement based on procedures that are transparent for the public, and in accordance with their institutional and legal framework.

3 The Partnership Agreement shall cover all support from the ESI Funds in the Member State concerned.

4 Each Member State shall submit its Partnership Agreement to the Commission by 22 April 2014.

5 Where one or more of the Fund-specific Regulations does not enter into force or is not expected to enter into force by 22 February 2014, the Partnership Agreement submitted by a Member State as referred to in paragraph 4 shall not be required to contain the elements referred

to in points (a)(ii), (iii), (iv) and (vi) of Article 15(1) for the ESI Fund affected by such a delay or expected delay in the entry into force of the Fund-specific Regulation.

Article 15

Content of the Partnership Agreement

- 1 The Partnership Agreement shall set out:
 - a arrangements to ensure alignment with the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, including:
 - (i) an analysis of disparities, development needs and growth potential with reference to the thematic objectives and the territorial challenges, and taking account of the National Reform Programme, where appropriate, and relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU;
 - (ii) a summary of the ex ante evaluations of the programmes, or key findings of the ex ante evaluation of the Partnership Agreement, where the latter evaluation is undertaken by the Member State at its own initiative;
 - (iii) selected thematic objectives, and for each of the selected thematic objectives a summary of the main results expected for each of the ESI Funds;
 - (iv) the indicative allocation of support by the Union by thematic objective at national level for each of the ESI Funds, as well as the total indicative amount of support envisaged for climate change objectives;
 - (v) the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds;
 - (vi) the list of the programmes under the ERDF, the ESF and the Cohesion Fund, except those under the European territorial cooperation goal, and of the programmes of the EAFRD and the EMFF, with the respective indicative allocations by ESI Fund and by year;
 - (vii) information on the allocation related to the performance reserve, broken down by ESI Fund and, where appropriate, by category of region, and on the amounts excluded for the purpose of calculating the performance reserve in accordance with Article 20;
 - b arrangements to ensure effective implementation of the ESI Funds, including:
 - (i) arrangements, in line with the institutional framework of the Member States, that ensure coordination between the ESI Funds and other Union and national funding instruments and with the EIB;
 - (ii) the information required for ex ante verification of compliance with the rules on additionality as they are defined in Part Three;
 - (iii) a summary of the assessment of the fulfilment of applicable ex ante conditionalities in accordance with Article 19 and Annex XI at national level and, in the event that the applicable ex ante conditionalities are not

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- fulfilled, of the actions to be taken, the bodies responsible and the timetable for implementation of those actions;
- (iv) the methodology and mechanisms to ensure consistency in the functioning of the performance framework in accordance with Article 21;
 - (v) an assessment of whether there is a need to reinforce the administrative capacity of the authorities involved in the management and control of the programmes and, where appropriate, of beneficiaries as well as, where necessary, a summary of actions to be taken for that purpose;
 - (vi) a summary of the actions planned in the programmes, including an indicative timetable for achievement of a reduction in the administrative burden on beneficiaries;
- c arrangements for the partnership principle as referred in Article 5;
 - d an indicative list of the partners referred to in Article 5 and a summary of the actions taken to involve them in accordance with Article 5 and of their role in the preparation of the Partnership Agreement and the progress report as referred to in Article 52.
- 2 The Partnership Agreement shall also indicate:
- a an integrated approach to territorial development supported by the ESI Funds or a summary of the integrated approaches to territorial development based on the content of the programmes, setting out:
 - (i) the arrangements to ensure an integrated approach to the use of the ESI Funds for the territorial development of specific subregional areas, in particular the implementation arrangements for Articles 32, 33 and 36 accompanied by the principles for identifying the urban areas where integrated actions for sustainable urban development are to be implemented;
 - (ii) the main priority areas for cooperation under the ESI Funds, taking account, where appropriate, of macro-regional strategies and sea basin strategies;
 - (iii) where appropriate, an integrated approach to addressing the specific needs of geographical areas most affected by poverty or of target groups at highest risk of discrimination or social exclusion, with special regard to marginalised communities, persons with disabilities, the long term unemployed and young people not in employment, education or training;
 - (iv) where appropriate, an integrated approach to address the demographic challenges of regions or specific needs of geographical areas which suffer from severe and permanent natural or demographic handicaps as referred to in Article 174 TFEU;
 - b arrangements to ensure efficient implementation of the ESI Funds, including an assessment of the existing systems for electronic data exchange, and a summary of the actions planned to gradually permit all exchanges of information between beneficiaries, and authorities responsible for management and control of programmes, to be carried out by electronic data exchange.

Article 16

Adoption and amendment of the Partnership Agreement

1 The Commission shall assess the consistency of the Partnership Agreement with this Regulation taking account of the National Reform Programme, where appropriate, and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148 (4) TFEU, as well as of the ex ante evaluations of the programmes, and shall make observations within three months of the date of submission by the Member State of its Partnership Agreement. The Member State concerned shall provide all necessary additional information and, where appropriate, shall revise the Partnership Agreement.

2 The Commission shall adopt a decision, by means of implementing acts, approving the elements of the Partnership Agreement falling under Article 15(1) and those falling under Article 15(2) in the event that a Member State has made use of the provisions of Article 96(8), for the elements requiring a Commission decision under Article 96(10), no later than four months after the date of submission by the Member State of its Partnership Agreement, provided that any observations made by the Commission have been adequately taken into account. The Partnership Agreement shall not enter into force before 1 January 2014.

3 The Commission shall prepare a report on the outcome of the negotiations concerning the Partnership Agreements and the programmes, including an overview of the key issues, for each Member State, by 31 December 2015. That report shall be submitted to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions simultaneously.

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

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

Article 17

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

1 Where Article 14(5) applies, each Member State shall submit to the Commission a revised Partnership Agreement that includes the elements missing from the Partnership Agreement for the ESI Fund concerned, within two months of the date of entry into force of the Fund-specific Regulation that was subject to the delay.

2 The Commission shall assess the consistency of the revised Partnership Agreement with this Regulation in accordance with Article 16(1) and shall adopt a decision, by means of implementing acts, approving the revised Partnership Agreement in accordance with Article 16(2).

CHAPTER III

Thematic concentration, ex ante conditionalities and performance review

Article 18

Thematic concentration

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

Article 19

Ex ante conditionalities

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

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

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

3 The Commission shall assess the consistency and the adequacy of the information provided by the Member State on the applicability of ex ante conditionalities and on the

fulfilment of applicable ex ante conditionalities in the framework of its assessment of the programmes and, where appropriate, of the Partnership Agreement.

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

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

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

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

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

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

Article 20

Performance reserve

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

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

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

Article 21

Performance review

1 The Commission, in cooperation with the Member States, shall undertake a review of the performance of the programmes in each Member State in 2019 (the 'performance review'), with reference to the performance framework set out in the respective programmes. The method for establishing the performance framework is set out in Annex II.

2 The performance review shall examine the achievement of the milestones of the programmes at the level of priorities, on the basis of the information and the assessments presented in the annual implementation report submitted by the Member States in the year 2019.

Article 22

Application of the performance framework

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IV

Measures linked to sound economic governance

Article 23

Measures linking effectiveness of ESI Funds to sound economic governance

1 The Commission may request a Member State to review and propose amendments to its Partnership Agreement and relevant programmes, where this is necessary to support the implementation of relevant Council Recommendations or to maximise the growth and competitiveness impact of the ESI Funds in Member States receiving financial assistance.

Such a request may be made for the following purposes:

- a to support the implementation of a relevant country-specific recommendation adopted in accordance with Article 121(2) TFEU and of a relevant Council recommendation adopted in accordance with Article 148(4) TFEU, addressed to the Member State concerned;
- b to support the implementation of relevant Council Recommendations addressed to the Member State concerned and adopted in accordance with Articles 7(2) or 8(2) of Regulation (EU) No 1176/2011⁽¹⁰⁾ of the European Parliament and of the Council provided that these amendments are deemed necessary to help correct the macro-economic imbalances; or
- c to maximise the growth and competitiveness impact of the available ESI Funds, if a Member State meets one of the following conditions:
 - (i) Union financial assistance is made available to it under Council Regulation (EU) No 407/2010⁽¹¹⁾;
 - (ii) financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002⁽¹²⁾;
 - (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⁽¹³⁾ or that triggers a decision of the Council in accordance with Article 136(1) TFEU.

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

2 A request by the Commission to a Member State in accordance with paragraph 1 shall be justified, with reference to the need to support the implementation of the relevant

recommendations or to maximise the growth and competitiveness impact of the ESI Funds as appropriate, and shall indicate the programmes or priorities which it considers are concerned and the nature of the amendments expected. Such a request shall not be made before 2015 or after 2019, nor in relation to the same programmes in two consecutive years.

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

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

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

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

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

7 The scope and level of the suspension of payments imposed in accordance with paragraph 6, shall be proportionate and effective, and respect equality of treatment between Member States, in particular with regard to the impact of the suspension on the economy of the Member State concerned. The programmes to be suspended shall be determined on the basis of the needs identified in the request referred to in paragraphs 1 and 2.

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

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

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

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

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

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

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

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

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

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

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

- a A maximum of 50 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-compliance with an excessive deficit procedure as referred to in point (a) of the first subparagraph of paragraph 9 and a maximum 25 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-

compliance relating to a corrective action plan under an excessive imbalances procedure as referred to in point (b) of the first subparagraph of paragraph 9 or non-compliance with the recommended corrective action pursuant to an excessive imbalances procedure as referred to in point (c) of the first subparagraph of paragraph 9.

The level of the suspension shall increase gradually up to a maximum of 100 % of the commitments relating to the next financial year for the ESI Funds in the case of an excessive deficit procedure and up to 50 % of the commitments relating to the next financial year for the ESI Funds in the case of an excessive imbalance procedure, in line with the seriousness of the non-compliance;

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

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

- a maximum of 1 % of nominal GDP applying in the event of persistent non-compliance with an excessive deficit procedure in accordance with point (a) of the first subparagraph of paragraph 9; and
 - a maximum of 0,5 % of nominal GDP applying in the event of persistent non-compliance with an excessive imbalance procedure in accordance with point (b) or (c) of the first subparagraph of paragraph 9, in line with the seriousness of the non-compliance;
- c a maximum of 50 % of the commitments relating to the next financial year for the ESI Funds or a maximum of 0,5 % of nominal GDP in the first case of non-compliance as referred to in points (d) and (e) of the first subparagraph of paragraph 9.

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

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

- a where the excessive deficit procedure is held in abeyance in accordance with Article 9 of Council Regulation (EC) No 1467/97⁽¹⁴⁾ 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;
- c where the Commission has concluded that the Member State concerned has taken adequate measures to implement the adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013 or the measures requested by a decision of the Council in accordance with Article 136(1) TFEU.

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

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

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

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

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

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

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

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

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

Article 24

Increase in payments for Member State with temporary budgetary difficulties

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

- a where the Member State concerned receives a loan from the Union under Council Regulation (EU) No 407/2010;
- b where the Member State concerned receives medium-term financial assistance in accordance with Regulation (EC) No 332/2002 conditional on the implementation of a macro-economic adjustment programme;

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- c where financial assistance is made available to the Member State concerned conditional on the implementation of a macroeconomic adjustment programme as specified in Regulation (EU) No 472/2013.

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

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

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

Article 25

Management of technical assistance for Member States with temporary budgetary difficulties

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

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

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

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

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the ESI Funds

Article 26

Preparation of programmes

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

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

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

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

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

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

Article 27

Content of programmes

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

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

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

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

4 Each priority shall set out indicators and corresponding targets expressed in qualitative or quantitative terms, in accordance with the Fund-specific rules, in order to assess progress in programme implementation aimed at achievement of objectives as the basis for monitoring, evaluation and review of performance. Those indicators shall include:

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

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

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

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

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

Article 28

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

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

- a the elements set out under the first subparagraph of Article 27(1), and under paragraphs 2, 3 and 4 of that Article as regards the principles set out under Article 5;
- b an identification of the bodies referred to under Articles 125, 126 and 127 of this Regulation and Article 65(2) of the EAFRD Regulation as relevant for the Fund concerned;
- c for each ex ante conditionality, established in accordance with Article 19 and Annex XI, which is applicable to the programme, an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the Partnership Agreement and programme, and where ex ante conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality, the bodies responsible and a timetable for such actions in accordance with the summary submitted in the Partnership Agreement.

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

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

Article 29

Procedure for the adoption of programmes

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

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

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

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

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

Article 30

Amendment of programmes

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

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

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

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

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

Article 31

Participation of the EIB

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

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

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

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

CHAPTER II

Community-led local development

Article 32

Community-led local development

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

2 Community-led local development shall be:

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

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

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

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

Article 33

Community-led local development strategies

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

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

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

3 Community-led local development strategies shall be selected by a committee set up for that purpose by the managing authority or authorities responsible and approved by the managing authority or authorities responsible.

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

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

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

Article 34

Local action groups

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

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

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

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

- a building the capacity of local actors to develop and implement operations including fostering their project management capabilities;
- b drawing up a non-discriminatory and transparent selection procedure and objective criteria for the selection of operations, which avoid conflicts of interest, ensure that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allow selection by written procedure;
- c ensuring coherence with the community-led local development strategy when selecting operations, by prioritising those operations according to their contribution to meeting that strategy's objectives and targets;
- d preparing and publishing calls for proposals or an ongoing project submission procedure, including defining selection criteria;
- e receiving and assessing applications for support;
- f selecting operations and fixing the amount of support and, where relevant, presenting the proposals to the body responsible for final verification of eligibility before approval;
- g monitoring the implementation of the community-led local development strategy and the operations supported and carrying out specific evaluation activities linked to that strategy.

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

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

Article 35

Support from the ESI Funds for community-led local development

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

- a the costs of preparatory support consisting of 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;
- (iii) costs related to the design of the community-led local development strategy, including consultancy costs and costs for actions related to consultations of stakeholders for the purposes of preparing the strategy;
- (iv) administrative costs (operating and personnel costs) of an organisation that applies for preparatory support during the preparation phase;
- (v) support for small pilot projects.

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

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

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

CHAPTER III

Territorial development

Article 36

Integrated territorial investment

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

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

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

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

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

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

TITLE IV

FINANCIAL INSTRUMENTS

Article 37

Financial instruments

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

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

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

- a an analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology;
- b an assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion;
- c an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and level of, preferential remuneration to attract counterpart resources from private investors and/or a description of the mechanisms which will be used to establish the need for, and extent of, such preferential remuneration, such as a competitive or appropriately independent assessment process;

- d an assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future;
- e the proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate;
- f a specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;
- g provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation.

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

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

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

4 Where financial instruments support financing to enterprises, including SMEs, such support shall target the establishment of new enterprises, early stage-capital, i.e. seed capital and start-up capital, expansion capital, capital for the strengthening of the general activities of an enterprise, or the realisation of new projects, penetration of new markets or new developments by existing enterprises, without prejudice to applicable Union State aid rules, and in accordance with the Fund-specific rules. Such support may include investment in both tangible and intangible assets as well as working capital within the limits of applicable Union State aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. It may also include the costs of transfer of proprietary rights in enterprises provided that such transfers take place between independent investors.

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

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

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

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

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

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

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

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

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

Article 38

Implementation of financial instruments

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

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

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

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

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

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

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

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

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

- a invest in the capital of existing or newly created legal entities, including those financed from other ESI Funds, dedicated to implementing financial instruments consistent with the objectives of the respective ESI Funds, which will undertake implementation tasks; the support to such entities shall be limited to the amounts necessary to implement new investments in accordance with Article 37 and in a manner that is consistent with the objectives of this Regulation;
- b entrust implementation tasks to:
 - (i) the EIB;
 - (ii) international financial institutions in which a Member State is a shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority;
 - (iii) a body governed by public or private law; or
- c undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. In that case the managing authority shall be considered to be the beneficiary as defined in point (10) of Article 2.

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

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

The Commission shall notify those delegated acts simultaneously to the European Parliament and the Council by 22 april 2014.

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

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

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

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

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

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

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

Article 39

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

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

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

- a uncapped guarantees providing capital relief to financial intermediaries for new portfolios of debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation;
- b securitisation, as defined in point (61) of Article 4 (1) of Regulation (EU) 575/2013 of the European Parliament and of the Council⁽¹⁵⁾, 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⁽¹⁶⁾ and in Regulation (EU) No 575/2013 to ensure adequate alignment of interest. In the case of securitisation under point (b) of the first subparagraph of this paragraph, the financial intermediary is obliged to originate new debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation.

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

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

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

Where the conditions for the termination of the Member State's contribution to the instrument established in the funding agreement between the Member State concerned and the EIB referred to in point (c) of the first subparagraph of paragraph 4 have been satisfied, the Member State shall submit a request for amendment of the programme referred to in point (b) of the first subparagraph of paragraph 4 and reallocate the remaining contribution to other programmes and priorities in accordance with requirements for thematic concentration.

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

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

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

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

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

- b it shall be provided by each participating Member State as part of a single dedicated national programme per financial contribution by ERDF and EAFRD supporting the thematic objective set out in point (3) of the first paragraph of Article 9;
- c it shall be subject to the conditions set out in a funding agreement concluded between each participating Member State and the EIB including, inter alia:
 - (i) tasks and obligations of the EIB including remuneration;
 - (ii) minimum leverage to be achieved at clearly defined milestones within the eligibility period indicated in Article 65(2);
 - (iii) conditions for the new debt finance;
 - (iv) provisions relating to non-eligible activities and exclusion criteria;
 - (v) schedule of payments;
 - (vi) penalties in the event of non-performance by financial intermediaries;
 - (vii) selection of financial intermediaries;
 - (viii) monitoring, reporting and auditing;
 - (ix) visibility;
 - (x) the conditions for termination of the agreement.

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

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

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

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

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

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

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

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

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

- a for the activities referred to in point (a) of the first subparagraph of paragraph 2 of this Article, to the resources referred to in point (b) of the first subparagraph of Article 42(3);
- b for the activities referred to in point (b) of the first subparagraph of paragraph 2 of this Article, to the aggregate amount of new debt finance resulting from the securitisation transactions, paid to or to the benefit of eligible SMEs within the eligibility period indicated in Article 65(2).

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

- 10 The report referred to in Article 46(1) shall include the following additional elements:
- a the total amount of ERDF and EAFRD support paid to the financial instrument in relation to uncapped guarantees or securitisation transactions, by programme and priority or measure;
 - b progress in creating the new debt finance in accordance with Article 37(4), for eligible SMEs.

11 Notwithstanding Article 93(1), the resources allocated to instruments under paragraph 2 of this Article may be used for the purpose of giving rise to new SME debt finance in the entire territory of the Member State without regard to the categories of region, unless otherwise provided for in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4.

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

Article 40

Management and control of financial instruments

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

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

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

- a supporting documents, providing evidence of the support from the financial instrument to final recipients and of its use for the intended purposes in line with applicable law, are not available at the level of the managing authority or at the level of the bodies that implement financial instruments;
- b there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided.

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

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

Article 41

Requests for payment including expenditure for financial instruments

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

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

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

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

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

4 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the models to be used when submitting

additional information concerning financial instruments with the applications for payments to the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 42

Eligible expenditure at closure

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

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

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

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

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

The amount paid into the escrow account:

- a shall be used solely for follow-on investments in final recipients having received initial equity investments from the financial instrument within the eligibility period, which are still wholly or partially outstanding;
- b shall be used solely for follow-on investments to be made in accordance with market standards and market standard contractual arrangements and limited to the minimum necessary to stimulate private sector co-investment, while ensuring continuity of

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financing for the target enterprises so that both public and private investors can benefit from investments;

- c shall not exceed 20 % of the eligible expenditure of the equity-based instrument referred to in point (a) of the first subparagraph of paragraph 1 from which ceiling capital resources and gains returned to that equity-based instrument during the eligibility period shall be deducted.

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

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

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

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

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

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

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

Article 43

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

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

2 Interest and other gains attributable to support from the ESI Funds paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument in accordance with point (d) of the first subparagraph of Article 42(1), and expenditure paid in accordance with Article 42(2), as the initial support from the ESI Funds either within the same financial

instrument, or following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period.

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

Article 44

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

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

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

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

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

Article 45

Use of resources after the end of the eligibility period

Member States shall adopt the necessary measures to ensure that resources paid back to financial instruments, including capital repayments and gains and other earnings or yields generated during a period of at least eight years after the end of the eligibility period, which are attributable to the support from the ESI Funds to financial instruments pursuant to Article 37, are used in accordance with the aims of the programme or programmes, either within the same financial instrument or, following the exit of those resources from the financial instrument, in other financial instruments provided that, in both cases, an assessment of market conditions demonstrates a continuing need for such investment, or in other forms of support.

Article 46

Report on implementation of financial instruments

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

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

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

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

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

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

TITLE V

MONITORING AND EVALUATION

CHAPTER I

Monitoring

Section I

Monitoring of programmes

Article 47

Monitoring committee

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

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

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

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

Article 48

Composition of the monitoring committee

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

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

may include representatives of the EGTC carrying out activities related to the programme within the programme area.

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

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

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

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

Article 49

Functions of the monitoring committee

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

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

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

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

Article 50

Implementation reports

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

2 Annual implementation reports shall set out key information on implementation of the programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, including changes in the value of result indicators where appropriate, and, beginning from the annual implementation report to be submitted in 2017, the milestones defined in the performance framework. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, having regard to the stage of implementation, for selected operations. They shall also set out a synthesis of the findings

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of all evaluations of the programme that have become available during the previous financial year, any issues which affect the performance of the programme, and the measures taken. The annual implementation report to be submitted in 2016 may also set out, where relevant, actions taken to fulfil ex ante conditionalities.

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

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

5 The annual implementation report to be submitted in 2019 and the final implementation report for the ESI Funds shall, in addition to the information and assessment referred to in paragraphs 2 and 3, include information on, and assess progress towards, achieving the objectives of the programme and its contribution to achieving the Union strategy for smart, sustainable and inclusive growth.

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

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

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

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

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

Article 51

Annual review meeting

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

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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.

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

- h the role of the partners referred to in Article 5 in the implementation of the Partnership Agreement;
- i a summary of the actions taken in relation to the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds.

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

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

Article 53

Reporting by the Commission and debate on the ESI Funds

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

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

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

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

CHAPTER II

Evaluation

Article 54

General Provisions

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

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

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

4 All evaluations shall be made available to the public.

Article 55

Ex ante evaluation

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

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

3 Ex ante evaluations shall appraise:

- a the contribution to the Union strategy for smart, sustainable and inclusive growth, having regard to the selected thematic objectives and priorities, taking into account national and regional needs and potential for development as well as lessons drawn from previous programming periods;
- b the internal coherence of the proposed programme or activity and its relationship with other relevant instruments;
- c the consistency of the allocation of budgetary resources with the objectives of the programme;
- d the consistency of the selected thematic objectives, the priorities and corresponding objectives of the programmes with the CSF, the Partnership Agreement and the relevant country specific recommendations adopted in accordance with Article 121(2) TFEU and where appropriate at national level, the National Reform Programme;

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- e the relevance and clarity of the proposed programme indicators;
 - f how the expected outputs will contribute to results;
 - g whether the quantified target values for indicators are realistic, having regard to the support envisaged from the ESI Funds;
 - h the rationale for the form of support proposed;
 - i the adequacy of human resources and administrative capacity for management of the programme;
 - j the suitability of the procedures for monitoring the programme and for collecting the data necessary to carry out evaluations;
 - k the suitability of the milestones selected for the performance framework;
 - l the adequacy of planned measures to promote equal opportunities between men and women and to prevent any discrimination, in particular as regards accessibility for persons with disabilities;
 - m the adequacy of planned measures to promote sustainable development;
 - n measures planned to reduce the administrative burden on beneficiaries.
- 4 Ex ante evaluations shall incorporate, where appropriate, the requirements for strategic environmental assessment set out in Directive 2001/42/EC of the European Parliament and of the Council⁽¹⁷⁾ 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.
- 5 Paragraphs 1, 2 and 3 of this Article shall not apply to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).

Article 57

Ex post evaluation

- 1 The ex post evaluations shall be carried out by the Commission, or by the Member States in close cooperation with the Commission. Ex post evaluations shall examine the effectiveness and efficiency of the ESI Funds and their contribution to the Union strategy for

smart, sustainable and inclusive growth taking account of the targets established in that Union strategy and in accordance with specific requirements established in the Fund-specific rules.

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

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

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

TITLE VI

TECHNICAL ASSISTANCE

Article 58

Technical assistance at the initiative of the Commission

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

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

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

- a assistance for project preparation and appraisal, including with the EIB;
- b support for institutional strengthening and administrative capacity-building for the effective management of the ESI Funds;
- c studies linked to the Commission's reporting on the ESI Funds and the cohesion report;
- d measures related to the analysis, management, monitoring, information exchange and implementation of the ESI Funds, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- e evaluations, expert reports, statistics and studies, including those of a general nature, concerning the current and future operation of the ESI Funds, which may be carried out where appropriate by the EIB;
- f actions to disseminate information, support networking, carry out communication activities, raise awareness and promote cooperation and exchange of experience, including with third countries;
- g the installation, operation and interconnection of computerised systems for management, monitoring, audit, control and evaluation;
- h actions to improve evaluation methods and the exchange of information on evaluation practices;
- i actions related to auditing;
- j the strengthening of national and regional capacity regarding investment planning, needs assessment, preparation, design and implementation of financial instruments, joint action plans and major projects, including joint initiatives with the EIB;

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- k the dissemination of good practices in order to assist Member States to strengthen the capacity of the relevant partners referred to in Article 5 and their umbrella organisations;
- l measures to identify, prioritize and implement structural and administrative reforms in response to economic and social challenges in Member States which meet the conditions set out in Article 24(1).

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

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

Article 59

Technical assistance at the initiative of the Member States

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

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

TITLE VII

FINANCIAL SUPPORT FROM THE ESI FUNDS

CHAPTER I

Support from the ESI Funds

Article 60

Determination of co-financing rates

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

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

Article 61

Operations generating net revenue after completion

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

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

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

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

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

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

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

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

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

When a flat rate for a new sector or subsector has been established by the adoption of a delegated act in accordance with the third and fourth subparagraphs, a managing

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authority may choose to apply the method set out in point (a) of the first subparagraph for new operations in relation to the sector or subsector concerned.

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

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

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

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

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

7 Paragraphs 1 to 6 shall not apply to:

- a operations or parts of operations supported solely by the ESF;
- b operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000;
- c repayable assistance subject to an obligation for full repayment and prizes;
- d technical assistance;
- e support to or from financial instruments;
- f operations for which public support takes the form of lump sums or standard scale unit costs;
- g operations implemented under a joint action plan;
- h operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation.

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

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

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

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

CHAPTER II

Special rules on support from the ESI Funds to PPPs

Article 62

PPPs

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

Article 63

Beneficiary under PPP operations

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

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

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

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

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

5 The replacement of a beneficiary shall not be considered a change in ownership within the meaning of point (b) of Article 71(1) if that replacement satisfies the applicable conditions

set out in paragraph 3 of this Article and in a delegated act adopted pursuant to paragraph 4 of this Article.

Article 64

Support for PPP operations

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

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

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

3 The funds paid into the escrow account referred to in paragraph 2 shall be used for payments in accordance with the PPP agreement, including any payments to be made in the event of termination of the PPP agreement.

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

CHAPTER III

Eligibility of expenditure and durability

Article 65

Eligibility

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

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

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

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

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

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

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

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

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

This paragraph shall not apply to:

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

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

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

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

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

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

Article 66

Forms of support

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

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

Article 67

Forms of grants and repayable assistance

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

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

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

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

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

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

- a a fair, equitable and verifiable calculation method based on:
 - (i) statistical data or other objective information;

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- (ii) the verified historical data of individual beneficiaries; or
 - (iii) the application of the usual cost accounting practices of individual beneficiaries;
- b in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary;
 - c in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
 - d rates established by this Regulation or the Fund-specific rules;
 - e specific methods for determining amounts established in accordance with the Fund-specific rules.
- 6 The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

Article 68

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

- 1 Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:
- a a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
 - b a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;
 - c a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

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

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

Article 69

Specific eligibility rules for grants and repayable assistance

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

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

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

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

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

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

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

Article 70

Eligibility of operations depending on location

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

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

- a the operation is for the benefit of the programme area;

- b the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority, or 5 % of the support from the EAFRD at the level of the programme;
- c the monitoring committee has given its agreement to the operation or types of operations concerned;
- d the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

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

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

Article 71

Durability of operations

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

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

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

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

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

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

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

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

TITLE VIII

MANAGEMENT AND CONTROL

CHAPTER I

Management and control systems

Article 72

General principles of management and control systems

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

- (a) a description of the functions of each body involved in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) systems for reporting and monitoring where the body responsible entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

Article 73

Responsibilities under shared management

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

Article 74

Responsibilities of Member States

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

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

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

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

CHAPTER II

Commission powers and responsibilities

Article 75

Commission powers and responsibilities

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

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

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

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

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

TITLE IX

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

CHAPTER I

Financial management

Article 76

Budget commitments

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

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

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

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

Following application of the performance framework in accordance with Article 22, where priorities have not achieved their milestones, the Commission shall where necessary decommit the corresponding appropriations committed to the programmes

concerned as part of the performance reserve and shall make them available again for the programmes for which the allocation is increased as a result of an amendment approved by the Commission in accordance with Article 22(5).

Article 77

Common rules for payments

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

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

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

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

Article 78

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

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

Article 79

Requests for payment

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

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

Article 80

Use of the euro

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

Article 81

Payment of initial pre-financing

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

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

Article 82

Clearance of initial pre-financing

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

Article 83

Interruption of the payment deadline

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

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

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

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

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

situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

CHAPTER II

Examination and acceptance of accounts

Article 84

Deadline for the examination and acceptance of accounts by the Commission

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

CHAPTER III

Financial corrections

Article 85

Financial corrections by the Commission

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

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

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

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

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

CHAPTER IV

Decommitment

Article 86

Principles

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

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

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

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

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

Article 87

Exception to the decommitment

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

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

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

For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

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

Article 88

Procedure

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

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

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

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

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

PART THREE

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

TITLE I

OBJECTIVES AND FINANCIAL FRAMEWORK

CHAPTER I

Mission, goals and geographical coverage of support

Article 89

Mission and goals

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

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

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

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

Article 90

Investment for growth and jobs goal

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

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

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

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

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

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

4 Immediately following the entry into force of this Regulation, the Commission shall adopt a decision, by means of an implementing act, setting out the list of regions fulfilling the criteria of the three categories of regions referred to in paragraph 2 and of Member States fulfilling the criteria of paragraph 3. That list shall be valid from 1 January 2014 to 31 December 2020.

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

CHAPTER II

Financial framework

Article 91

Resources for economic, social and territorial cohesion

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

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

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

Article 92

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

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

- a 52,45 % (i.e., a total of EUR 164 279 015 916) for less developed regions;
- b 10,24 % (i.e., a total of EUR 32 084 931 311) for transition regions;
- c 15,67 % (i.e., a total of EUR 49 084 308 755) for more developed regions;
- d 21,19 % (i.e., a total of EUR 66 362 384 703) for Member States supported by the Cohesion Fund;
- e 0,44 % (i.e., a total of EUR 1 386 794 724) as additional funding for the outermost regions identified in Article 349 TFEU and the NUTS level 2 regions fulfilling the criteria laid down in Article 2 of Protocol No 6 to the 1994 Act of Accession.

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

3 In 2016, the Commission shall, in its technical adjustment for the year 2017 in accordance with Articles 4 and 5 of Regulation (EU, Euratom) No 1311/2013, review the total allocations under the Investment for growth and jobs goal of each Member State for 2017-2020, applying the allocation method set out in paragraphs 1 to 16 of Annex VII on the basis of the most

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

4 In order to ensure that sufficient investment is targeted at youth employment, labour mobility, knowledge, social inclusion and combating poverty, the share of Structural Funds resources available for programming for operational programmes, under the Investment for growth and jobs goal allocated to the ESF in each Member State, shall not be lower than the corresponding ESF share for that Member State laid down in the operational programmes for the Convergence and Regional competitiveness and employment objectives for the 2007-2013 programming period. To that share shall be added an additional amount for each Member State determined in accordance with the method set out in Annex IX in order to ensure that the share of the ESF as a percentage of total combined resources for the Funds at Union level, excluding the support from the Cohesion Fund for transport infrastructure under the CEF referred to in paragraph 6 and support from the Structural Funds for aid for the most deprived referred to in paragraph 7, in Member States is not less than 23,1 %. For the purposes of this paragraph, investment provided from the ESF to the YEI shall be considered to be part of the share of Structural Funds allocated to the ESF.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 93

Non-transferability of resources between categories of regions

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

2 By way of derogation from paragraph 1, the Commission may accept, in duly justified circumstances which are linked to the implementation of one or more thematic objectives, a proposal by a Member State in its first submission of the Partnership Agreement or, in duly justified circumstances, at the time of allocation of the performance reserve, or in a major revision of the Partnership Agreement, to transfer up to 3 % of the total appropriation for a category of regions to other categories of regions.

Article 94

Non-transferability of resources between goals

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

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

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

Article 95

Additionality

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

- (1) 'gross fixed capital formation' means all the resident producers' acquisitions, less disposals, of fixed assets during a given period and certain additions to the value of non-produced assets realised by the productive activity of producer or institutional units, as defined in Council Regulation (EC) No 2223/96⁽¹⁸⁾;
- (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.

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

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

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

6 If it is established by the Commission in the ex post verification that a Member State has not maintained the reference level of public or equivalent structural expenditure under the Investment for growth and jobs goal set out in the Partnership Agreement and as set out in Annex X, the Commission may, in relation to the degree of non-compliance, carry out a financial correction by adoption of a decision by means of implementing act. In determining whether to carry out a financial correction the Commission shall take into account whether the economic situation of the Member State has significantly changed since the mid-term verification. The detailed rules relating to financial correction rates are set out in point 3 of Annex X.

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

TITLE II

PROGRAMMING

CHAPTER I

General provisions on the Funds

Article 96

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

1 An operational programme shall consist of priority axes. A priority axis shall concern one Fund and one category of region, except in the case of the Cohesion Fund, and shall correspond, without prejudice to Article 59, to a thematic objective and comprise one or more of

the investment priorities of that thematic objective, in accordance with the Fund-specific rules. Where appropriate and in order to increase its impact and effectiveness through a thematically coherent integrated approach, a priority axis may:

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

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

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

- a a justification for the choice of thematic objectives, corresponding investment priorities and financial allocations having regard to the Partnership Agreement, based on an identification of regional and, where appropriate, national needs including the need to address the challenges identified in relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and the relevant Council recommendations adopted in accordance with Article 148(4) TFEU, taking into account the ex ante evaluation in accordance with Article 55;
- b for each priority axis other than technical assistance:
 - (i) the investment priorities and corresponding specific objectives;
 - (ii) in order to strengthen the result-orientation of the programming, the expected results for the specific objectives, and the corresponding result indicators, with a baseline value and a target value, where appropriate quantified in accordance with the Fund-specific rules;
 - (iii) a description of the type and examples of actions to be supported under each investment priority and their expected contribution to the specific objectives referred to in point (i) including the guiding principles for the selection of operations and where appropriate, the identification of main target groups, specific territories targeted, types of beneficiaries, the planned use of financial instruments and major projects;
 - (iv) the output indicators, including the quantified target value, which are expected to contribute to the results, in accordance with the Fund-specific rules, for each investment priority;
 - (v) identification of implementation steps and financial and output indicators, and where appropriate, result indicators, to be used as milestones and targets for the performance framework in accordance with Article 21(1) and Annex II;
 - (vi) the corresponding categories of intervention based on a nomenclature adopted by the Commission, and an indicative breakdown of the programmed resources;

Status: This is the original version (as it was originally adopted).

- (vii) where appropriate, a summary of the planned use of technical assistance including, where necessary, actions to reinforce the administrative capacity of authorities involved in the management and control of the programmes and beneficiaries;
- c for each priority axis concerning technical assistance:
 - (i) specific objectives;
 - (ii) the expected results for each specific objective, and, where objectively justified given the content of the actions, the corresponding result indicators, with a baseline value and a target value, in accordance with the Fund-specific rules;
 - (iii) a description of actions to be supported and their expected contribution to the specific objectives referred to in point (i);
 - (iv) the output indicators which are expected to contribute to the results;
 - (v) the corresponding categories of intervention based on a nomenclature adopted by the Commission, and an indicative breakdown of the programmed resources.

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

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

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

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

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

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

3 Taking into account its content and objectives, an operational programme shall describe the integrated approach to territorial development, having regard to the Partnership

Agreement, and showing how that operational programme contributes to the accomplishment of its objectives and expected results, specifying, where appropriate, the following:

- a the approach to the use of community-led local development instruments and the principles for identifying the areas where it will be implemented;
 - b the indicative amount of the ERDF support for integrated actions for sustainable urban development, to be implemented in accordance with Article 7(3) of the ERDF Regulation and the indicative allocation of ESF support for integrated actions;
 - c the approach to the use of the ITI instrument other than in cases covered by point (b), and their indicative financial allocation from each priority axis;
 - d the arrangements for interregional and transnational actions, within the operational programmes, with beneficiaries located in at least one other Member State;
 - e where Member States and regions participate in macro-regional strategies and sea-basin strategies, subject to the needs of the programme area as identified by the Member State, the contribution of the planned interventions under the programme to such strategies.
- 4 In addition, the operational programme shall specify the following:
- a where appropriate, the identification of whether and how it addresses the specific needs of geographical areas most affected by poverty or 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.
- 5 The operational programme shall identify:
- a the managing authority, the certifying authority, where applicable, and the audit authority;
 - b the body to which payments are to be made by the Commission;
 - c the actions taken to involve the relevant partners referred to in Article 5 in the preparation of the operational programme, and the role of those partners in the implementation, monitoring and evaluation of the operational programme.
- 6 The operational programme shall also set out the following, having regard to the content of the Partnership Agreement and taking into account the institutional and legal framework of the Member States:
- a mechanisms to ensure coordination between the Funds, the EAFRD, the EMFF and other Union and national funding instruments, and with the EIB taking into account the relevant provisions laid down in the CSF;
 - b for each ex ante conditionality, established in accordance with Article 19 and Annex XI, which is applicable to the operational programme, an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the Partnership Agreement and operational programme, and where ex ante conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality, the bodies responsible and a timetable for such actions in accordance with the summary submitted in the Partnership Agreement;
 - c a summary of the assessment of the administrative burden on beneficiaries and, where necessary, the actions planned, accompanied by an indicative timeframe, to reduce the administrative burden.

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

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

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

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

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

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

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

Article 97

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

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

Article 98

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

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

2 The ERDF and the ESF may finance, in a complementary manner and subject to a limit of 10 % of Union funding for each priority axis of an operational programme, a part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the satisfactory implementation of the operation and are directly linked to it.

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

Article 99

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

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

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

CHAPTER II

Major projects

Article 100

Content

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

Article 101

Information necessary for the approval of a major project

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

- (a) details concerning the body to be responsible for implementation of the major project, and its capacity;
- (b) a description of the investment and its location;
- (c) the total cost and total eligible cost, taking account of the requirements set out in Article 61;
- (d) feasibility studies carried out, including the options analysis, and the results;
- (e) a cost-benefit analysis, including an economic and a financial analysis, and a risk assessment;
- (f) an analysis of the environmental impact, taking into account climate change adaptation and mitigation needs, and disaster resilience;
- (g) an explanation as to how the major project is consistent with the relevant priority axes of the operational programme or operational programmes concerned, and its expected contribution to achieving the specific objectives of those priority axes and the expected contribution to socio-economic development;
- (h) the financing plan showing the total planned financial resources and the planned support from the Funds, the EIB, and all other sources of financing, together with physical and financial indicators for monitoring progress, taking account of the identified risks;
- (i) the timetable for implementing the major project and, where the implementation period is expected to be longer than the programming period, the phases for which support from the Funds is requested during the programming period.

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

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

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

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

Article 102

Decision on a major project

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

- 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.

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

5 Major projects notified to the Commission under paragraph 1 or submitted for approval under paragraph 2 shall be contained in the list of major projects in an operational programme.

6 Expenditure relating to a major project may be included in a request for payment after the notification referred to in paragraph 1 or after the submission for approval referred to in paragraph 2. Where the Commission does not approve the major project selected by the managing authority, the declaration of expenditure following the adoption of the Commission decision shall be rectified accordingly.

Article 103

Decision on a major project subject to phased implementation

1 By way of derogation from the third paragraph of Article 101 and Article 102(1) and (2), the procedures set out in paragraphs 2, 3 and 4 of this Article shall apply to an operation which satisfies the following conditions:

- a the operation consists of the second or subsequent phase of a major project under the previous programming period for which the preceding phase or phases are approved by the Commission not later than 31 December 2015 pursuant to Regulation (EC) No 1083/2006; or in the case of Member States which acceded to the Union after 1 January 2013, no later than 31 December 2016;
- b the sum of the total eligible costs of all phases of the major project exceeds the respective levels set out in Article 100;
- c the major project application and assessment by the Commission under the previous programming period covered all the planned phases;
- d there are no substantial changes in the information referred to in the first paragraph of Article 101 of this Regulation for the major project compared to the information provided for the major project application submitted under Regulation (EC) No 1083/2006, in particular as regards the total eligible cost;
- e the phase of the major project to be implemented under the previous programming period is or will be ready to be used for its intended purpose as specified in the Commission decision by the deadline of the submission of the closure documents for the relevant operational programme or programmes.

2 The managing authority may proceed with the selection of the major project in accordance with Article 125(3) and submit the notification containing all the elements set out in point (a) of the first subparagraph of Article 102(1) together with its confirmation that the condition under point (d) of paragraph 1 of this Article is fulfilled. No quality review of the information by independent experts shall be required.

3 The financial contribution to the major project selected by the managing authority shall be deemed to be approved by the Commission in the absence of a decision, by means of an implementing act, refusing the financial contribution to the major project within three months of the date of the notification referred to in paragraph 2. The Commission shall refuse the financial contribution only on the grounds that there have been substantial changes in the information referred to in point (d) of paragraph 1 or that the major project is not consistent with the relevant priority axis of the operational programme or programmes concerned.

4 Article 102(3) to (6) shall apply to decisions on a major project subject to phased implementation.

CHAPTER III

Joint action plan

Article 104

Scope

1 A joint action plan is an operation the scope of which is defined and which is managed in relation to the outputs and results to be achieved. It comprises a project or a group of projects, not consisting of the provision of infrastructure, carried out under the responsibility of the beneficiary, as part of an operational programme or programmes. The outputs and results of a joint action plan shall be agreed between a Member State and the Commission and shall contribute to specific objectives of the operational programmes and form the basis of support from the Funds. Results shall refer to direct effects of the joint action plan. The beneficiary of a joint action plan shall be a public law body. Joint action plans shall not be considered to be major projects.

2 The public expenditure allocated to a joint action plan shall be a minimum of EUR 10 000 000 or 20 % of the public support of the operational programme or programmes, whichever is lower. For the purpose of undertaking a pilot project, the minimum public expenditure allocated to one joint action plan for each operational programme may be reduced to EUR 5 000 000.

3 Paragraph 2 shall not apply to operations supported under the YEI.

Article 105

Preparation of joint action plans

1 The Member State, the managing authority or any designated public law body may submit a proposal for a joint action plan at the same time as or subsequent to the submission of the operational programmes concerned. That proposal shall contain all the information referred to in Article 106.

2 A joint action plan shall cover part of the period between 1 January 2014 and 31 December 2023. The outputs and results of a joint action plan shall give rise to reimbursement only if attained after the date of the decision of approval of the joint action plan referred to in Article 107 and before the end of the implementation period defined in that decision.

Article 106

Content of joint action plans

A joint action plan shall contain:

- (1) an analysis of the development needs and objectives justifying it, taking into account the objectives of the operational programmes and, where applicable, the relevant country-specific recommendations and the broad guidelines of the economic policies

- of the Member States and of the Union under Article 121(2) TFEU and the relevant Council recommendations which the Member States are to take into account in their employment policies under Article 148(4) TFEU;
- (2) the framework describing the relationship between the general and specific objectives of the joint action plan, the milestones and the targets for outputs and results, and the projects or types of projects envisaged;
 - (3) the common and specific indicators used to monitor outputs and results, where relevant, by priority axis;
 - (4) information on its geographic coverage and target groups;
 - (5) its expected implementation period;
 - (6) an analysis of its effects on the promotion of equality between men and women and the prevention of discrimination;
 - (7) an analysis of its effects on the promotion of sustainable development, where appropriate;
 - (8) its implementing provisions, including the following:
 - (a) the designation of the beneficiary responsible for the implementation of the joint action plan, providing guarantees of its competence in the domain concerned as well as its administrative and financial management capacity;
 - (b) the arrangements for steering the joint action plan, in accordance with Article 108;
 - (c) the arrangements for monitoring and evaluating the joint action plan including arrangements ensuring the quality, collection and storage of data on the achievement of milestones, outputs and results;
 - (d) the arrangements ensuring the dissemination of information and communication in relation to the joint action plan and to the Funds;
 - (9) its financial arrangements, including the following:
 - (a) the costs of achieving milestones, outputs and result targets with reference to point (2), based on the methods set out in Article 67(5) of this Regulation and in Article 14 of the ESF Regulation;
 - (b) an indicative schedule of payments to the beneficiary linked to the milestones and targets;
 - (c) the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure.

The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the format of the model for the joint action plan. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

Article 107

Decision on the joint action plan

1 The Commission shall appraise the joint action plan on the basis of the information referred to in Article 106 in order to determine whether support from the Funds is justified.

Where the Commission, within two months following the submission of a joint action plan proposal, considers that it does not meet the appraisal requirements referred to in Article 104, it shall make observations to the Member State. The Member State shall provide to the Commission all necessary additional information requested and, where appropriate, revise the joint action plan accordingly.

2 Provided that any observations have been adequately taken into account, the Commission shall adopt a decision, by means of an implementing act, approving the joint action plan no later than four months after its submission by the Member State but not before the adoption of the operational programmes concerned.

3 The decision referred to in paragraph 2 shall indicate the beneficiary and the general and specific objectives of the joint action plan, the milestones and targets for outputs and results, the costs of achieving those milestones, outputs and result targets, and the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure, the implementation period of the joint action plan and, where relevant, the geographical coverage and target groups of the joint action plan.

4 Where the Commission refuses, by means of an implementing act, to allow support from the Funds to be allocated to a joint action plan, it shall notify the Member State of its reasons within the period laid down in paragraph 2.

Article 108

Steering committee and amendment of the joint action plan

1 The Member State or the managing authority shall set up a steering committee for the joint action plan, distinct from the monitoring committee of the relevant operational programmes. The steering committee shall meet at least twice a year and shall report to the managing authority. The managing authority shall inform the relevant monitoring committee of the results of the work carried out by the steering committee and the progress of the implementation of the joint action plan in accordance with point (e) of Article 110(1) and point (a) of Article 125(2).

The composition of the steering committee shall be decided by the Member State in agreement with the relevant managing authority, respecting the principle of partnership.

The Commission may participate in the work of the steering committee in an advisory capacity.

- 2 The steering committee shall carry out the following activities:
- a review progress towards achieving the milestones, outputs and results of the joint action plan;
 - b consider and approve any proposal to amend the joint action plan in order to take account of any issues affecting its performance.

3 Requests for amendment of joint action plans submitted by a Member State to the Commission shall be duly substantiated. The Commission shall assess whether the request for amendment is justified, taking account of the information provided by the Member State. The Commission may make observations and the Member State shall provide to the Commission all necessary additional information. The Commission shall adopt a decision, by means of an implementing act, on a request for amendment no later than three months after its submission by the Member State, provided that any observations made by the Commission have been satisfactorily taken into account. The amendment shall enter into force from the date of the decision, unless otherwise set out in the decision.

Article 109

Financial management and control of the joint action plan

1 Payments to the beneficiary of a joint action plan shall be treated as lump sums or standard scales of unit costs. The ceiling for lump sums set out in point (c) of the first subparagraph of Article 67(1) shall not apply.

2 The financial management, control and audit of the joint action plan shall be aimed exclusively at verifying that the conditions for payments defined in the decision approving the joint action plan have been fulfilled.

3 The beneficiary of a joint action plan and the bodies acting under its responsibility may apply their accounting practices for the costs of implementing operations. Those accounting practices and the costs actually incurred by the beneficiary shall not be subject to audit by the audit authority or the Commission.

TITLE III

MONITORING, EVALUATION, INFORMATION AND COMMUNICATION

CHAPTER I

Monitoring and evaluation

Article 110

Functions of the monitoring committee

- 1 The monitoring committee shall examine in particular:
- a any issues that affect the performance of the operational programme;
 - b progress made in implementation of the evaluation plan and the follow-up given to findings of evaluations;
 - c implementation of the communication strategy;
 - d implementation of major projects;
 - e implementation of joint action plans;
 - f actions to promote equality between men and women, equal opportunities, and non-discrimination, including accessibility for persons with disabilities;
 - g actions to promote sustainable development;

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- h where applicable ex ante conditionalities are not fulfilled at the date of the submission of the Partnership Agreement and operational programme, progress on actions to fulfil the applicable ex ante conditionalities;
 - i financial instruments.
- 2 By way of derogation from Article 49(3), the monitoring committee shall examine and approve:
- a the methodology and criteria used for selection of operations;
 - b the annual and final implementation reports;
 - c the evaluation plan for the operational programme and any amendment of the evaluation plan, including where either is part of a common evaluation plan pursuant to Article 114(1);
 - d the communication strategy for the operational programme and any amendment of the strategy;
 - e any proposal by the managing authority for any amendment to the operational programme.

Article 111

Implementation reports for the Investment for growth and jobs goal

1 By 31 May 2016 and by the same date of each subsequent year until and including 2023 the Member State shall submit to the Commission an annual implementation report in accordance with Article 50(1). The report submitted in 2016 shall cover the financial years 2014 and 2015, as well as the period between the starting date for eligibility of expenditure and 31 December 2013.

2 For the reports submitted in 2017 and 2019, the deadline referred to in paragraph 1 shall be 30 June.

3 Annual implementation reports shall set out information on:

- a implementation of the operational programme in accordance with Article 50(2);
- b progress in preparation and implementation of major projects and joint action plans.

4 The annual implementation reports submitted in 2017 and 2019 shall set out and assess the information required under Article 50(4) and (5) respectively and the information set out in paragraph 3 of this Article together with the following information:

- a progress in the implementation of the evaluation plan and the follow-up given to the findings of evaluations;
- b the results of the information and publicity measures of the Funds carried out under the communication strategy;
- c the involvement of the partners in the implementation, monitoring and evaluation of the operational programme.

The annual implementation reports submitted in 2017 and 2019 may, depending on the content and objectives of operational programmes, set out information and assess the following:

- a progress in the implementation of the integrated approach to territorial development, including development of regions facing demographic challenges and permanent or natural handicaps, sustainable urban development, and community-led local development under the operational programme;

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- b progress in the implementation of actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use the Funds;
- c progress in the implementation of any interregional and transnational actions;
- d where appropriate, the contribution to macro-regional and sea basin strategies;
- e the specific actions taken to promote equality between men and women and to prevent discrimination, in particular accessibility for persons with disabilities, and the arrangements implemented to ensure the integration of the gender perspective in the operational programme and operations;
- f actions taken to promote sustainable development in accordance with Article 8;
- g progress in the implementation of actions in the field of social innovation, where appropriate;
- h progress in the implementation of measures to address the specific needs of geographical areas most affected by poverty or of target groups at highest risk of poverty, discrimination or social exclusion, with special regard to marginalised communities and persons with disabilities, long term unemployed and young people not in employment, including, where appropriate, the financial resources used.

By way of derogation from the first and second subparagraphs, and in order to ensure consistency between the Partnership Agreement and the progress report, Member States with no more than one operational programme per Fund may include the information relating to ex ante conditionalities referred to in Article 50(3), the information required by Article 50(4) and the information referred to in points (a), (b), (c) and (h) of the second subparagraph of this paragraph in the progress report instead of the annual implementation reports submitted in 2017 and 2019 respectively and the final implementation report, without prejudice to point (b) of Article 110(2).

5 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the models for the annual and final implementation reports. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

Article 112

Transmission of financial data

1 By 31 January, 31 July and 31 October, the Member State shall transmit electronically to the Commission for monitoring purposes, for each operational programme and by priority axis:

- a the total and public eligible cost of the operations and the number of operations selected for support;
- b the total eligible expenditure declared by beneficiaries to the managing authority.

2 In addition, the transmission made by 31 January shall contain the above data broken down by category of intervention. That transmission shall be considered to fulfil the requirement for the submission of financial data referred to in Article 50(2).

3 A forecast of the amount for which Member States expect to submit payment applications for the current financial year and the subsequent financial year shall accompany the transmissions to be made by 31 January and 31 July.

4 The cut-off date for the data submitted under this Article shall be the end of the month preceding the month of submission.

5 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the model to be used when submitting the financial data to the Commission for monitoring purposes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 113

Cohesion Report

The report of the Commission referred to in Article 175 TFEU shall include:

- (a) a record of progress made towards achieving economic, social and territorial cohesion, including the socio-economic situation and development of the regions, as well as the integration of the Union's priorities;
- (b) a record of the role of the Funds, EIB funding and the other instruments in, as well as the effect of other Union and national policies on, the progress made;
- (c) where appropriate an indication of future Union measures and policies necessary to strengthen economic, social and territorial cohesion, as well as to deliver the Union's priorities.

Article 114

Evaluation

1 An evaluation plan shall be drawn up by the managing authority or Member State for one or more operational programmes. The evaluation plan shall be submitted to the monitoring committee no later than one year after the adoption of the operational programme.

2 By 31 December 2022, managing authorities shall submit to the Commission, for each operational programme, a report summarising the findings of evaluations carried out during the programming period and the main outputs and results of the operational programme, providing comments on the reported information.

3 The Commission shall carry out ex post evaluations in close cooperation with the Member States and managing authorities.

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

CHAPTER II

Information and communication

Article 115

Information and communication

- 1 Member States and managing authorities shall be responsible for:
 - a drawing up communication strategies;

- b ensuring the establishment of a single website or a single website portal providing information on, and access to, all operational programmes in that Member State, including information about the timing of implementation of programming and any related public consultation processes;
- c informing potential beneficiaries about funding opportunities under operational programmes;
- d publicising to Union citizens the role and achievements of cohesion policy and of the Funds through information and communication actions on the results and impact of Partnership Agreements, operational programmes and operations.

2 Member States or managing authorities shall, in order to ensure transparency concerning support from the Funds, maintain a list of operations by operational programme and by Fund in a spreadsheet data format, which allows data to be sorted, searched, extracted, compared and easily published on the internet, for instance in CSV or XML format. The list of operations shall be accessible through the single website or the single website portal providing a list and summary of all operational programmes in that Member State.

In order to encourage the use of the list of operations subsequently by the private sector, civil society or national public administration, the website may clearly indicate the applicable licensing rules under which data are published.

The list of operations shall be updated at least every six months.

The minimum information to be set out in the list of operations is laid down in Annex XII.

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

4 The Commission shall adopt implementing acts concerning the technical characteristics of information and communication measures for the operation and instructions for creating the emblem and a definition of the standard colours. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 116

Communication strategy

1 The Member State or the managing authorities shall draw up a communication strategy for each operational programme. A common communication strategy may be drawn up for several operational programmes. The communication strategy shall take into account the size of the operational programme or programmes concerned, in accordance with the principle of proportionality.

The communication strategy shall include the elements set out in Annex XII.

2 The communication strategy shall be submitted to the monitoring committee for approval in accordance with point (d) of Article 110(2) no later than six months after the adoption of the operational programme or programmes concerned.

Where a common communication strategy is drawn up for several operational programmes and concerns several monitoring committees, the Member State may designate one monitoring committee to be responsible, in consultation with the other relevant monitoring committees, for the approval of the common communication strategy and for the approval of any subsequent amendments of that strategy.

Where necessary, the Member State or managing authorities may amend the communication strategy during the programming period. The amended communication strategy shall be submitted by the managing authority to the monitoring committee for approval in accordance with point (d) of Article 110(2).

3 By way of derogation from the third subparagraph of paragraph 2, the managing authority shall inform the monitoring committee or committees responsible at least once a year on the progress in the implementation of the communication strategy as referred to in point (c) of Article 110(1) and on its analysis of the results as well as on the planned information and communication activities to be carried out in the following year. The monitoring committee shall, if it considers it to be appropriate, give an opinion on the planned activities for the following year.

Article 117

Information and communication officers and their networks

1 Each Member State shall designate an information and communication officer to coordinate information and communication actions in relation to one or more Funds, including relevant programmes under the European territorial cooperation goal, and shall inform the Commission accordingly.

2 The information and communication officer shall be responsible for the coordination of the national network of Fund communicators, where such a network exists, the creation and maintenance of the website or website portal referred to in Annex XII and the provision of an overview of communication measures undertaken at Member State level.

3 Each managing authority shall designate one person to be responsible for information and communication at operational programme level and shall inform the Commission of those designated. Where appropriate, one person may be designated for several operational programmes.

4 Union networks comprising the members designated by the Member States shall be set up by the Commission to ensure exchange of information on the results of the implementation of the communication strategies, the exchange of experience in implementing the information and communication measures, and the exchange of good practices.

TITLE IV

TECHNICAL ASSISTANCE

Article 118

Technical assistance at the initiative of the Commission

The Funds, taking into account the deductions made in accordance with Article 91(3), may support technical assistance up to a ceiling of 0,35 % of their respective annual allocation.

Article 119

Technical assistance of the Member States

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

The specific allocation for YEI may be taken into account by a Member State in the calculation of the limit to the total amount of the Funds allocated to the technical assistance of the Member State.

2 Each Fund may support technical assistance operations eligible under any of the other Funds. Without prejudice to paragraph 1, the allocation for technical assistance from a Fund shall not exceed 10 % of the total allocation of that Fund to operational programmes in a Member State under each category of region, where applicable, of the Investment for growth and jobs goal.

3 By way of derogation from Article 70(1) and (2), technical assistance operations may be implemented outside the programme area, but within the Union, provided that the operations are for the benefit of the operational programme, or, in the case of a technical assistance operational programme, for the other programmes concerned.

4 In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations relating to more than one category of region, the expenditure relating to the operations may be implemented under a priority axis combining different categories of region and attributed on a pro rata basis taking into account the allocation under each category of region as a share of the total allocation to the Member State.

5 By way of derogation from paragraph 1, where the total amount of the Funds allocated to a Member State under the Investment for growth and jobs goal does not exceed EUR 1 000 000 000 the amount allocated to technical assistance may increase up to 6 % of that total amount or EUR 50 000 000, whichever is the lower.

6 Technical assistance shall take the form of a mono-fund priority axis within an operational programme or of a specific operational programme, or both.

TITLE V

FINANCIAL SUPPORT FROM THE FUNDS

Article 120

Determination of co-financing rates

1 The Commission decision adopting an operational programme shall fix the co-financing rate and the maximum amount of support from Funds for each priority axis. Where a priority axis concerns more than one category of regions or more than one Fund, the Commission decision shall, where necessary, fix the co-financing rate by category of region and Fund.

2 For each priority axis, the Commission decision shall set out whether the co-financing rate for the priority axis is to be applied to:

- a total eligible expenditure, including public and private expenditure; or
- b eligible public expenditure.

3 The co-financing rate at the level of each priority axis and, where relevant, by category of region and Fund, of operational programmes under the Investment for growth and jobs goal shall be no higher than:

- a 85 % for the Cohesion Fund;
- b 85 % for the less developed regions of Member States whose average GDP per capita for the period 2007 - 2009 was below 85 % of the EU-27 average during the same period and for the outermost regions including the additional allocation for outermost regions in accordance with point (e) of Article 92(1) and Article 4(2) of the ETC Regulation;
- c 80 % for the less developed regions of Member States other than those referred to in point (b), and for all regions whose GDP per capita used as an eligibility criterion for the 2007-2013 programming period was less than 75 % of the average of the EU-25 but whose GDP per capita is above 75 % of the GDP average of the EU-27, as well as for regions defined in Article 8(1) of Regulation (EU) 1083/2006 receiving transitional support for the 2007-2013 programming period;
- d 60 % for the transition regions other than those referred to in point (c);
- e 50 % for the more developed regions other than those referred to in point (c).

For the period from 1 January 2014 to 30 June 2017 the co-financing rate at the level of each priority axis for all operational programmes in Cyprus shall be not higher than 85 %.

The Commission shall carry out a review to assess the justification for maintaining the co-financing rate, referred to in the second subparagraph, after 30 June 2017 and shall if necessary make a legislative proposal before 30 June 2016.

The co-financing rate at the level of each priority axis of operational programmes under the European territorial cooperation goal shall be no higher than 85 %.

The maximum co-financing rate under points (b), (c), (d) and (e) of the first subparagraph shall be increased for each priority axis implementing the YEI and where a priority axis is dedicated to social innovation or to transnational cooperation, or a combination of both. That increase shall be determined in accordance with the Fund-specific rules.

4 The co-financing rate of the additional allocation in accordance with point (e) of Article 92(1) shall be no higher than 50 % for NUTS level 2 regions fulfilling the criteria laid down in Protocol No 6 to the 1994 Act of Accession.

5 The maximum co-financing rate under paragraph 3 at the level of a priority axis shall be increased by ten percentage points, where the whole of a priority axis is delivered through financial instruments, or through community-led local development.

6 The contribution from the Funds for each priority axis shall not be less than 20 % of the eligible public expenditure.

7 A separate priority axis with a co-financing rate of up to 100 % may be established within an operational programme to support operations implemented through financial instruments set up at Union level and managed directly or indirectly by the Commission. Where a separate priority axis is established for this purpose, the support under this axis may not be implemented by any other means.

Article 121

Modulation of the co-financing rates

The co-financing rate from the Funds to a priority axis may be modulated to take account of:

- (1) the importance of the priority axis for the delivery of the Union strategy for smart, sustainable and inclusive growth, having regard to the specific gaps to be addressed;
- (2) the protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action and the polluter pays principle;
- (3) the rate of mobilisation of private financing;
- (4) the coverage of areas with severe and permanent natural or demographic handicaps defined as follows:
 - (a) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland;
 - (b) mountainous areas as defined by the national legislation of the Member State;
 - (c) sparsely (i.e. less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas;
 - (d) the inclusion of the outermost regions as referred to in Article 349 TFEU.

PART FOUR

GENERAL PROVISIONS APPLICABLE TO THE FUNDS AND THE EMFF

TITLE I

MANAGEMENT AND CONTROL

CHAPTER I

Management and control systems

Article 122

Responsibilities of Member States

1 Member States shall ensure that management and control systems for operational programmes are set up in accordance with Articles 72, 73 and 74.

2 Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following:

- a cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- b cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
- c cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported, the data to be provided and on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States.

The Commission shall adopt implementing acts setting out the frequency of the reporting of irregularities and the reporting format to be used. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

3 Member States shall ensure that no later than 31 December 2015, all exchanges of information between beneficiaries and a managing authority, a certifying authority, an audit authority and intermediate bodies can be carried out by means of electronic data exchange systems.

The systems referred to in the first subparagraph shall facilitate interoperability with national and Union frameworks and allow for the beneficiaries to submit all information referred to in the first subparagraph only once.

The Commission shall adopt implementing acts laying down detailed rules concerning the exchanges of information under this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4 Paragraph 3 shall not apply to the EMFF.

CHAPTER II

Management and control authorities

Article 123

Designation of authorities

1 Each Member State shall designate, for each operational programme, a national, regional or local public authority or body or a private body as managing authority. The same managing authority may be designated for more than one operational programme.

2 The Member State shall designate, for each operational programme, a national, regional or local public authority or body as a certifying authority, without prejudice to paragraph 3. The same certifying authority may be designated for more than one operational programme.

3 The Member State may designate for an operational programme a managing authority, which is a public authority or body, to carry out, in addition, the functions of the certifying authority.

4 The Member State shall designate, for each operational programme, a national, regional or local public authority or body, functionally independent from the managing authority and the certifying authority, as audit authority. The same audit authority may be designated for more than one operational programme.

5 In the case of the Funds relating to the Investment for growth and jobs goal and in the case of the EMFF, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body.

Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000, the audit authority may be part of the same public authority or body as the managing authority either if, pursuant to the applicable provisions for the previous programming period, the Commission has informed the Member State prior to the date of adoption of the operational programme concerned of its conclusion that it can rely principally on its audit opinion, or if the Commission is satisfied on the basis of the experience of the previous programming period that the institutional organisation and accountability of the audit authority provide adequate guarantees of its functional independence and reliability.

6 The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing or the certifying authority under the responsibility of that authority. The relevant arrangements between the managing authority or certifying authority and the intermediate bodies shall be formally recorded in writing.

7 The Member State or the managing authority may entrust the management of part of an operational programme to an intermediate body by way of an agreement in writing between the intermediate body and the Member State or managing authority (a 'global grant'). The intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as of its administrative and financial management capacity.

8 The Member State may, at its own initiative, designate a coordinating body whose responsibility shall be to liaise with and provide information to the Commission, to coordinate

activities of the other relevant designated bodies and to promote the harmonised application of applicable law.

9 The Member State shall lay down in writing rules governing its relationship with the managing authorities, certifying authorities and audit authorities, the relations between such authorities, and the relationship of such authorities with the Commission.

Article 124

Procedure for the designation of the managing authority and the certifying authority

1 The Member State shall notify the Commission of the date and form of the designations, which shall be carried out at an appropriate level, of the managing authority and, where appropriate, of the certifying authority prior to the submission of the first application for interim payment to the Commission.

2 The designations referred to in paragraph 1 shall be based on a report and an opinion of an independent audit body that assesses the fulfilment by the authorities of the criteria relating to the internal control environment, risk management, management and control activities, and monitoring set out in Annex XIII. The independent audit body shall be the audit authority, or another public or private law body with the necessary audit capacity, which is independent of the managing authority and, where applicable, of the certifying authority, and which shall carry out its work taking account of internationally accepted audit standards. Where the independent audit body concludes that the part of the management and control system, concerning the managing authority or the certifying authority, is essentially the same as for the previous programming period, and that there is evidence, on the basis of audit work done in accordance with the relevant provisions of Regulation (EC) No 1083/2006 and Council Regulation (EC) No 1198/2006⁽¹⁹⁾, of their effective functioning during that period, it may conclude that the relevant criteria are fulfilled without carrying out additional audit work.

3 Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000, the Commission may request, within one month of notification of the designations referred to in paragraph 1, the report and the opinion of the independent audit body referred to in paragraph 2 and the description of the functions and procedures in place for the managing authority or, where appropriate, the certifying authority. The Commission shall decide whether to request those documents on the basis of its risk assessment, taking into account information on significant changes in the functions and procedures of the managing authority or, where appropriate, the certifying authority compared to those in place for the previous programming period, and relevant evidence of their effective functioning.

The Commission may make observations within two months of receipt of the documents referred to in the first subparagraph. Without prejudice to Article 83, the examination of those documents shall not interrupt the treatment of applications for interim payments.

4 Where the total amount of support from the Funds to an operational programme exceeds EUR 250 000 000 or from the EMFF exceeds EUR 100 000 000 and there are significant changes in the functions and procedures of the managing authority or, where appropriate, of the certifying authority compared to those in place for the previous programming period, the Member State may, at its own initiative, submit to the Commission, within two months of the notification of the designations referred to in paragraph 1, the documents referred to in paragraph 3. The Commission shall make observations on those documents within three months of their receipt.

5 Where existing audit and control results show that the designated authority no longer fulfils the criteria referred to in paragraph 2, the Member State shall, at an appropriate level, fix, according to the severity of the problem, a period of probation, during which the necessary remedial action shall be taken.

Where the designated authority fails to implement the required remedial action within the period of probation determined by the Member State, the Member State, at an appropriate level, shall end its designation.

The Member State shall notify the Commission without delay when a designated authority is put under probation, providing information on the respective period of probation, when, following implementation of remedial actions, the probation is ended, as well as when the designation of an authority is ended. The notification that a designated body is put on probation by the Member State, without prejudice to the application of Article 83, shall not interrupt the treatment of applications for interim payments.

6 Where the designation of a managing authority or a certifying authority is ended, Member States shall designate, in accordance with the procedure provided for in paragraph 2, a new body, to take over the functions of the managing authority or of the certifying authority, and shall notify the Commission thereof.

7 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts concerning the model for the report and opinion of the independent audit body and the description of the functions and procedures in place for the managing authority and, where appropriate, the certifying authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 125

Functions of the managing authority

1 The managing authority shall be responsible for managing the operational programme in accordance with the principle of sound financial management.

2 As regards the management of the operational programme, the managing authority shall:

- a support the work of the monitoring committee referred to in Article 47 and provide it with the information it requires to carry out its tasks, in particular data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones;
- b draw up and, after approval by the monitoring committee, submit to the Commission annual and final implementation reports referred to in Article 50;
- 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:

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- a draw up and, once approved, apply appropriate selection procedures and criteria that:
 - (i) ensure the contribution of operations to the achievement of the specific objectives and results of the relevant priority;
 - (ii) are non-discriminatory and transparent;
 - (iii) take into account the general principles set out in Articles 7 and 8;
 - b ensure that a selected operation falls within the scope of the Fund or Funds concerned and can be attributed to a category of intervention or, in the case of the EMFF, a measure identified in the priority or priorities of the operational programme;
 - c ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution;
 - d satisfy itself that the beneficiary has the administrative, financial and operational capacity to fulfil the conditions referred to in point (c) before approval of the operation;
 - e satisfy itself that, where the operation has started before the submission of an application for funding to the managing authority, applicable law relevant for the operation has been complied with;
 - f ensure that operations selected for support from the Funds or the EMFF do not include activities which were part of an operation which has been or should have been subject to a procedure of recovery in accordance with Article 71 following the relocation of a productive activity outside the programme area;
 - g determine the categories of intervention or, in the case of the EMFF, the measures to which the expenditure of an operation shall be attributed.
- 4 As regards the financial management and control of the operational programme, the managing authority shall:
- a verify that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation;
 - b ensure that beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;
 - c put in place effective and proportionate anti-fraud measures taking into account the risks identified;
 - d set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of point (g) of Article 72;
 - e draw up the management declaration and annual summary referred to in points (a) and (b) of Article 59(5) of the Financial Regulation.

By way of derogation from point (a) of the first subparagraph, the ETC Regulation may establish specific rules on verification applicable to cooperation programmes.

- 5 Verifications pursuant to point (a) of the first subparagraph of paragraph 4 shall include the following procedures:
- a administrative verifications in respect of each application for reimbursement by beneficiaries;
 - b on-the-spot verifications of operations.

The frequency and coverage of the on-the-spot verifications shall be proportionate to the amount of public support to an operation and to the level of risk identified by such verifications and audits by the audit authority for the management and control system as a whole.

6 On-the-spot verifications of individual operations pursuant to point (b) of the first subparagraph of paragraph 5 may be carried out on a sample basis.

7 Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in point (a) of the first subparagraph of paragraph 4 shall ensure adequate separation of functions.

8 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established under point (d) of paragraph 2 of this Article.

The Commission shall adopt implementing acts laying down the technical specifications of the system established under point (d) of paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

9 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the detailed minimum requirements for the audit trail referred to in point (d) of the first subparagraph of paragraph 4 of this Article in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries.

10 The Commission shall, in order to ensure uniform conditions on the implementation of this Article, adopt implementing acts concerning the model for the management declaration referred to in point (e) of the first subparagraph of paragraph 4 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

Article 126

Functions of the certifying authority

The certifying authority of an operational programme shall be responsible in particular for:

- (a) drawing up and submitting payment applications to the Commission, and certifying that they result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the managing authority;
- (b) drawing up the accounts referred to in point (a) of Article 59(5) of the Financial Regulation;
- (c) certifying the completeness, accuracy and veracity of the accounts and that the expenditure entered in the accounts complies with applicable law and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with applicable law;
- (d) ensuring that there is a system which records and stores, in computerised form, accounting records for each operation, and which supports all the data required for drawing up payment applications and accounts, including records of amounts

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- recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for an operation or operational programme;
- (e) ensuring, for the purposes of drawing up and submitting payment applications, that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure;
 - (f) taking account when drawing up and submitting payment applications of the results of all audits carried out by, or under the responsibility of, the audit authority;
 - (g) maintaining, in a computerised form, accounting records of expenditure declared to the Commission and of the corresponding public contribution paid to beneficiaries;
 - (h) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the budget of the Union prior to the closure of the operational programme by deducting them from the subsequent statement of expenditure.

Article 127

Functions of the audit authority

1 The audit authority shall ensure that audits are carried out on the proper functioning of the management and control system of the operational programme and on an appropriate sample of operations on the basis of the declared expenditure. The declared expenditure shall be audited based on a representative sample and, as a general rule, on statistical sampling methods.

A non- statistical sampling method may be used on the professional judgement of the audit authority, in duly justified cases, in accordance with internationally accepted audit standards and in any case where the number of operations for an accounting year is insufficient to allow the use of a statistical method.

In such cases, the size of the sample shall be sufficient to enable the audit authority to draw up a valid audit opinion in accordance with the second subparagraph of Article 59(5) of the Financial Regulation.

The non-statistical sample method shall cover a minimum of 5 % of operations for which expenditure has been declared to the Commission during an accounting year and 10 % of the expenditure which has been declared to the Commission during an accounting year.

2 Where audits are carried out by a body other than the audit authority, the audit authority shall ensure that any such body has the necessary functional independence.

3 The audit authority shall ensure that audit work takes account of internationally accepted audit standards.

4 The audit authority shall, within eight months of adoption of an operational programme, prepare an audit strategy for performance of audits. The audit strategy shall set out the audit methodology, the sampling method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2024. Where a common management and control system applies to more than one operational programme, a single audit strategy may be prepared for the operational programmes concerned. The audit authority shall submit the audit strategy to the Commission upon request.

5 The audit authority shall draw up:

- a an audit opinion in accordance with the second subparagraph of Article 59(5) of the Financial Regulation;
- b a control report setting out the main findings of the audits carried out in accordance with paragraph 1, including findings with regard to deficiencies found in the management and control systems, and the proposed and implemented corrective actions.

Where a common management and control system applies to more than one operational programme, the information required under point (b) of the first subparagraph may be grouped in a single report.

6 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down models for the audit strategy, the audit opinion and the control report. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

7 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in paragraph 1 of this Article.

8 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives.

CHAPTER III

Cooperation with audit authorities

Article 128

Cooperation with audit authorities

1 The Commission shall cooperate with audit authorities to coordinate their audit plans and methods and shall immediately exchange with those authorities the results of audits carried out on management and control systems.

2 To facilitate this cooperation in cases where a Member State designates more than one audit authority, the Member State may designate a coordination body.

3 The Commission, the audit authorities and any coordination body shall meet on a regular basis and, as a general rule, at least once a year, unless otherwise agreed, to examine the annual control report, the audit opinion and the audit strategy, and to exchange views on issues relating to improvement of the management and control systems.

TITLE II

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

CHAPTER I

Financial management*Article 129***Common rules for payments**

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

*Article 130***Common rules for calculating interim payments and payment of the final balance**

1 The Commission shall reimburse as interim payments 90 % of the amount resulting from applying the co-financing rate for each priority, laid down in the decision adopting the operational programme, to the eligible expenditure for the priority included in the payment application. The Commission shall determine the remaining amounts to be reimbursed as interim payments or to be recovered in accordance with Article 139.

2 The contribution from the Funds or the EMFF to a priority through the interim payments and payment of the final balance shall not be higher than:

- a the eligible public expenditure indicated in the payment application for the priority; or
- b the contribution from the Funds or the EMFF for the priority laid down in the decision of the Commission approving the operational programme.

*Article 131***Payment applications**

1 Payment applications shall include, for each priority:

- a the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations, as entered in the accounting system of the certifying authority;
- b the total amount of public expenditure incurred in implementing operations, as entered in the accounting system of the certifying authority.

2 Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c) and (d) of the first subparagraph of Article 67(1), under Article 68, Article 69(1) and Article 109 of this Regulation and under Article 14 of the ESF Regulation. For those forms of support, the amounts included in a payment application shall be the costs calculated on the applicable basis.

3 In the case of aid schemes under Article 107 TFEU, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid.

4 By way of derogation from paragraph 1, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid under the following cumulative conditions:

- a those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State;
- b those advances do not exceed 40 % of the total amount of the aid to be granted to a beneficiary for a given operation;
- c those advances are covered by expenditure paid by beneficiaries in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within three years following the year of the payment of the advance or on 31 December 2023, whichever is earlier, failing which the next payment application shall be corrected accordingly.

5 Each payment application which includes advances of the type referred to in paragraph 4 shall separately disclose the total amount paid from the operational programme as advances, the amount which has been covered by expenditure paid by beneficiaries within three years of the payment of the advance in accordance with point (c) of paragraph 4, and the amount which has not been covered by expenditure paid by beneficiaries and for which the three year period has not yet elapsed.

6 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the model for payment applications. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 132

Payment to beneficiaries

1 Subject to the availability of funding from initial and annual pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary.

No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

2 The payment deadline referred to in paragraph 1 may be interrupted by the managing authority in either of the following duly justified cases:

- a the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of the first subparagraph of Article 125(4), have not been provided;
- b an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the interruption and the reasons for it.

Article 133

Use of the euro

1 Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro. Those amounts shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. The exchange rate shall be published electronically by the Commission each month.

2 By way of derogation from paragraph 1, the ETC Regulation may establish specific rules on the timing for conversion into euro.

3 When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 1 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

Article 134

Payment of pre-financing

- 1 The initial pre-financing amount shall be paid in instalments as follows:
- a in 2014: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme or 1,5 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme when a Member State has been receiving financial assistance since 2010, in accordance with Articles 122 and 143 TFEU, or from the European Financial Stability Facility (EFSF), or is receiving financial assistance on 31 December 2013 in accordance with Articles 136 and 143 TFEU;
 - b in 2015: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme or 1,5 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme when a Member State has been receiving financial assistance since 2010, in accordance with Articles 122 and 143 TFEU, or from the EFSF, or is receiving financial assistance on 31 December 2014 in accordance with Articles 136 and 143 TFEU;
 - c in 2016: 1 % of the amount of support from the Funds and the EMFF for the entire programming period to the operational programme.

If an operational programme is adopted in 2015 or later, the earlier instalments shall be paid in the year of adoption.

2 An annual pre-financing amount shall be paid before 1 July in the years 2016 to 2023. It shall be a percentage of the amount of the support from the Funds and the EMFF for the whole programming period to the operational programme as follows:

- 2016: 2 %
- 2017: 2,625 %
- 2018: 2,75 %
- 2019: 2,875 %
- 2020 to 2023: 3 %.

3 When calculating the amount of initial pre-financing referred to in paragraph 1, the amount of support for the entire programming period shall exclude the amounts from the performance reserve which were initially allocated to the operational programme.

When calculating the amount of annual pre-financing referred to in paragraph 2 up to and including 2020, the amount of support for the entire programming period shall exclude the amounts from the performance reserve which were initially allocated to the operational programme.

Article 135

Deadlines for presentation of interim payment applications and for their payment

1 The certifying authority shall submit on a regular basis an application for interim payment in accordance with Article 131(1) covering amounts entered in its accounting system in the accounting year. However, the certifying authority, where it considers it to be necessary, may include such amounts in payment applications submitted in subsequent accounting years.

2 The certifying authority shall submit the final application for an interim payment by 31 July following the end of the previous accounting year and, in any event, before the first application for interim payment for the next accounting year.

3 The first application for interim payment shall not be made before the notification to the Commission of the designation of the managing authorities and certifying authorities in accordance with Article 124.

4 Interim payments shall not be made for an operational programme unless the annual implementation report has been sent to the Commission in accordance with the Fund-specific rules.

5 Subject to available funding, the Commission shall make the interim payment no later than 60 days after the date on which a payment application is registered with the Commission.

Article 136

Decommitment

1 The Commission shall decommit any part of the amount in an operational programme that has not been used for payment of the initial and annual pre-financing and interim payments by 31 December of the third financial year following the year of budget commitment under the operational programme or for which a payment application drawn up in accordance with Article 131 has not been submitted in accordance with Article 135.

2 That part of commitments still open on 31 December 2023 shall be decommitted if any of the documents required under Article 141(1) has not been submitted to the Commission by the deadline set out in Article 141(1).

CHAPTER II

Preparation, examination and acceptance of accounts and closure of operational programmes and suspension of payments

Section I

Preparation, examination and acceptance of accounts

Article 137

Preparation of the accounts

1 The accounts referred to in point (a) of Article 59(5) of the Financial Regulation shall be submitted to the Commission for each operational programme. The accounts shall cover the accounting year and shall include at the level of each priority and, where applicable, fund and category of regions:

- a the total amount of eligible expenditure entered into the accounting systems of the certifying authority which has been included in payment applications submitted to the Commission in accordance with Article 131 and Article 135(2) by 31 July following the end of the accounting year, the total amount of the corresponding public expenditure incurred in implementing operations, and the total amount of corresponding payments made to beneficiaries under Article 132(1);
- b the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries effected pursuant to Article 71, and the irrecoverable amounts;
- c the amounts of programme contributions paid to financial instruments under Article 41(1) and advances of State aid under Article 131(4);
- d for each priority, a reconciliation between the expenditure stated pursuant to point (a) and the expenditure declared in respect of the same accounting year in payment applications, accompanied by an explanation of any differences.

2 Where expenditure previously included in an application for interim payment for the accounting year is excluded by a Member State from its accounts due to an ongoing assessment of that expenditure's legality and regularity, any or all of that expenditure subsequently found to be legal and regular may be included in an application for interim payment relating to subsequent accounting years.

3 The Commission shall, in order to lay down uniform conditions for the implementation of this Article, adopt implementing acts setting out the model for the accounts referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

Article 138

Submission of information

For each year from 2016 until and including 2025, Member States shall submit, by the deadline set out in Article 59(5) of the Financial Regulation, the documents referred to in that Article namely:

- (a) the accounts, referred to in Article 137(1) of this Regulation, for the preceding accounting year;
- (b) the management declaration and the annual summary referred to in point (e) of the first subparagraph of Article 125(4) of this Regulation, for the preceding accounting year;
- (c) the audit opinion and the control report referred to in points (a) and (b) of the first subparagraph of Article 127(5) of this Regulation, for the preceding accounting year.

Article 139

Examination and acceptance of accounts

1 The Commission shall carry out an examination of the documents submitted by the Member State under Article 138. Upon request by the Commission, the Member State shall provide all necessary additional information to enable the Commission to determine whether the accounts are complete, accurate and true, by the deadline set out in Article 84.

2 The Commission shall accept the accounts where it is able to conclude that the accounts are complete, accurate and true. The Commission shall reach such a conclusion where the audit authority has provided an unqualified audit opinion regarding the completeness, accuracy and veracity of the accounts unless the Commission has specific evidence that the audit opinion on the accounts is unreliable.

3 The Commission shall inform the Member State by the deadline set out in Article 84 as to whether it is able to accept the accounts.

4 If, for reasons attributable to Member State, the Commission is unable to accept the accounts by the deadline set out in Article 84, the Commission shall notify the Member States specifying the reasons in accordance with paragraph 2 of this Article and the actions which are required to be undertaken and the time period for their completion. At the end of the time period for the completion of those actions the Commission shall inform the Member State as to whether it is able to accept the accounts.

5 Issues related to legality and regularity of the underlying transactions concerning expenditure entered in the accounts shall not be taken into account for the purposes of acceptance of the accounts by the Commission. The procedure for examination and acceptance of the accounts shall not interrupt the treatment of applications for interim payments and shall not lead to suspension of payments, without prejudice to Articles 83 and 142.

6 On the basis of the accepted accounts, the Commission shall calculate the amount chargeable to the Funds and to the EMFF for the accounting year and the consequent adjustments in relation to the payments to the Member State. The Commission shall take into account:

- a the amounts in the accounts referred to in point (a) of Article 137(1) and to which the co-financing rate for each priority is to be applied;
- b the total amount of payments made by the Commission during that accounting year, consisting of:
 - (i) the amount of interim payments paid by the Commission in accordance with Article 130(1) and Article 24; and
 - (ii) the amount of the annual pre-financing paid under Article 134(2).

7 After the calculation carried out under paragraph 6, the Commission shall clear the respective annual pre-financing and pay any additional amount due within 30 days of the

acceptance of the accounts. Where there is an amount recoverable from the Member State, it shall be subject to a recovery order issued by the Commission which shall be executed, where possible, by offsetting against amounts due to the Member State under subsequent payments to the same operational programme. Such recovery shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. The amount recovered shall constitute assigned revenue in accordance with Article 177(3) of the Financial Regulation.

8 Where, after applying the procedure set out in paragraph 4, the Commission is unable to accept the accounts, the Commission shall determine, on the basis of the available information and in accordance with paragraph 6, the amount chargeable to the Funds for the accounting year, and shall inform the Member State. Where the Member State notifies the Commission of its agreement within two months of the transmission by the Commission of the information, paragraph 7 shall apply. In the absence of such agreement, the Commission shall adopt a decision, by means of implementing acts, setting out the amount chargeable to the Funds for the accounting year. Such decision shall not constitute a financial correction and shall not reduce support from the Funds to the operational programme. On the basis of the decision, the Commission shall apply the adjustments to the payments to the Member State in accordance with paragraph 7.

9 The acceptance of the accounts by the Commission, or a decision by the Commission under paragraph 8 of this Article, shall be without prejudice to the application of corrections under Articles 144 and 145.

10 Member States may replace irregular amounts which are detected after the submission of the accounts by making the corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 144 and 145.

Article 140

Availability of documents

1 Without prejudice to the rules governing State aid, the managing authority shall ensure that all supporting documents regarding expenditure supported by the Funds on operations for which the total eligible expenditure is less than EUR 1 000 000, are made available to the Commission and the European Court of Auditors upon request for a period of three years from 31 December following the submission of the accounts in which the expenditure of the operation is included.

In the case of operations other than those referred to in the first subparagraph, all supporting documents shall be made available for a two year period from 31 December following the submission of the accounts in which the final expenditure of the completed operation is included.

A managing authority may decide to apply to operations for which the total eligible expenditure is less than EUR 1 000 000 the rule referred to in the second subparagraph.

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

2 The managing authority shall inform beneficiaries of the start date of the period referred to in paragraph 1.

3 The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.

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4 The documents shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

5 The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

Section II

Closure of operational programmes

Article 141

Submission of closure documents and payment of the final balance

1 In addition to the documents referred to in Article 138, for the final accounting year from 1 July 2023 to 30 June 2024, Member States shall submit a final implementation report for the operational programme or the last annual implementation report for the operational programme supported by the EMFF.

2 The final balance shall be paid no later than three months after the date of acceptance of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

Section III

Suspension of payments

Article 142

Suspension of payments

1 All or part of the interim payments at the level of priorities or operational programmes may be suspended by the Commission if one or more of the following conditions are met:

- a there is a serious deficiency in the effective functioning of the management and control system of the operational programme, which has put at risk the Union contribution to the operational programme and for which corrective measures have not been taken;
- b expenditure in a statement of expenditure is linked to an irregularity having serious financial consequences which has not been corrected;
- c the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 83;
- d there is a serious deficiency in the quality and reliability of the monitoring system or of the data on common and specific indicators;

- e there is a failure to complete actions to fulfil an ex ante conditionality subject to the conditions set out in Article 19;
- f there is evidence resulting from the performance review for a priority that there has been a serious failure in achieving that priority's milestones relating to financial and output indicators and key implementation steps set out in the performance framework subject to the conditions set out in Article 22.

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

2 The Commission may decide, by means of implementing acts, to suspend all or part of interim payments, after having given the Member State the opportunity to present its observations.

3 The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted.

CHAPTER III

Financial corrections

Section I

Financial corrections by Member States

Article 143

Financial corrections by Member States

1 The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2 Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme. The Member States shall take into account the nature and gravity of the irregularities and the financial loss to the Funds or the EMFF and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts by the managing authority for the accounting year in which the cancellation is decided.

3 The contribution from the Funds or the EMFF cancelled in accordance with paragraph 2 may be reused by the Member State within the operational programme concerned, subject to paragraph 4.

4 The contribution cancelled in accordance with paragraph 2 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

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

Section II

Financial corrections by the Commission

Article 144

Criteria for financial corrections

1 The Commission shall make financial corrections, by means of implementing acts, by cancelling all or part of the Union contribution to an operational programme in accordance with Article 85, where, after carrying out the necessary examination, it concludes that:

- a there is a serious deficiency in the effective functioning of the management and control system of the operational programme which has put at risk the Union contribution already paid to the operational programme;
- b the Member State has not complied with its obligations under Article 143 prior to the opening of the correction procedure under this paragraph;
- c expenditure contained in a payment application is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph.

The Commission shall base its financial corrections on individual cases of identified irregularity and shall take account of whether an irregularity is systemic. Where it is not possible to quantify precisely the amount of irregular expenditure charged to the Funds or the EMFF, the Commission shall apply a flat rate or extrapolated financial correction.

2 The Commission shall, when deciding on a correction under paragraph 1, respect the principle of proportionality by taking account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the operational programme.

3 Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 143(2), the notifications sent under Article 122(2), and any replies from the Member State.

4 In accordance with Article 22(7), where the Commission, based on the examination of the final implementation report of the operational programme for the Funds or the last annual implementation report for the EMFF, establishes a serious failure to achieve the targets set out in the performance framework, it may apply financial corrections in respect of the priorities concerned, by means of implementing acts.

5 When a Member State does not comply with its obligations under Article 95, the Commission may, in relation to the degree of non-compliance with those obligations, make a financial correction by cancelling all or part of the Structural Funds contribution to the Member State concerned.

6 The Commission shall be empowered to adopt delegated acts in accordance with Article 149, laying down detailed rules concerning the criteria for determining serious

deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

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

Article 145

Procedure

1 Before taking a decision on a financial correction, the Commission shall launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months.

2 Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

3 The Commission shall take account of any evidence provided by the Member State within the time limits set out in paragraphs 1 and 2.

4 Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.

5 In the event of an agreement, and without prejudice to paragraph 6 of this Article, the Member State may reuse the Funds concerned in accordance with Article 143(3).

6 In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.

7 Where the Commission in carrying out its responsibilities under Article 75, or the European Court of Auditors, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Funds to the operational programme.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

- a had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial

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- 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⁽²⁰⁾.

Article 147

Repayment

1 Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 73 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.

2 Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

TITLE III

PROPORTIONAL CONTROL OF OPERATIONAL PROGRAMMES*Article 148***Proportional control of operational programmes**

1 Operations for which the total eligible expenditure does not exceed EUR 200 000 for the ERDF and the Cohesion Fund, EUR 150 000 for the ESF or EUR 100 000 for the EMFF shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Other operations shall not be subject to more than one audit per accounting year by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors, provided that the results of the audit work performed by the European Court of Auditors for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.

2 For operational programmes for which the most recent audit opinion indicates that there are no significant deficiencies, the Commission may agree with the audit authority in the subsequent meeting referred to in Article 128(3) that the level of audit work required may be reduced so that it is proportionate to the risk established. In such cases, the Commission shall not carry out its own on-the-spot audits unless there is evidence suggesting deficiencies in the management and control system affecting expenditure declared to the Commission in an accounting year for which the accounts have been accepted by the Commission.

3 For operational programmes for which the Commission concludes that the opinion of the audit authority is reliable, it may agree with the audit authority to limit the Commission's own on-the-spot audits to audit the work of the audit authority unless there is evidence of deficiencies in the work of the audit authority for an accounting year for which the accounts have been accepted by the Commission.

4 Notwithstanding paragraph 1, the audit authority and the Commission may carry out audits of operations in the event that a risk assessment or an audit by the European Court of Auditors establishes a specific risk of irregularity or fraud, in the case of evidence of serious deficiencies in the effective functioning of the management and control system of the operational programme concerned, and, during the period referred to in Article 140(1). The Commission may, for the purpose of assessing the work of an audit authority, review the audit trail of the audit authority or take part in the on-the-spot audits of the audit authority and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the audit authority, the Commission may carry out audits of operations.

PART FIVE

DELEGATIONS OF POWER, IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

Delegations of power and implementing provisions

Article 149

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) shall be conferred on the Commission from 21 December 2013 until 31 December 2020.

3 The delegation of power referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5 A delegated act adopted pursuant to Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4) and 64(4), the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 150

Committee Procedure

1 In the application of this Regulation, the ERDF Regulation, the ETC Regulation, the ESF Regulation and the CF Regulation, the Commission shall be assisted by a Coordination Committee for the European Structural and Investment Funds. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act in respect of the implementing powers referred to in the third paragraph of Article 8, the fifth subparagraph of Article 22(7), the second subparagraph of Article 38(3), Article 38(10), the second subparagraph of Article 39(4), Article 46(3), the second subparagraph of Article 96(2), Article 115(4) and the second subparagraph of Article 125(8), and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

CHAPTER II

Transitional and final provisions

Article 151

Review

The European Parliament and the Council shall review this Regulation by 31 December 2020 in accordance with Article 177 TFEU.

Article 152

Transitional provisions

1 This Regulation shall not affect either the continuation or modification, including the total or partial cancellation of assistance approved by the Commission on the basis of Regulation (EC) No 1083/2006 or any other legislation applying to that assistance on 31 December 2013. That Regulation or such other applicable legislation shall consequently continue to apply after 31 December 2013 to that assistance or the operations concerned until their closure. For the purposes of this paragraph assistance shall cover operational programmes and major projects.

2 Applications to receive assistance made or approved under Regulation (EC) No 1083/2006 shall remain valid.

3 Where a Member State makes use of the option set out in Article 123(3), it may submit a request to the Commission for the managing authority 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.

Article 153

Repeal

1 Without prejudice to the provisions laid down in Article 152, Regulation (EC) No 1083/2006 is hereby repealed with effect from 1 January 2014.

2 References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex XIV.

Article 154

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Articles 20 to 24, Article 29(3), point (a) of Article 38(1), Articles 58, 60, 76 to 92, 118, 120, 121 and Articles 129 to 147 shall apply with effect from 1 January 2014.

The second sentence of the seventh subparagraph of Article 39(2) and the fifth paragraph of Article 76 shall apply with effect from the date on which the amendment to the Financial Regulation relating to the decommitment of appropriations has entered into force.

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

Done at Brussels, 17 December 2013.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

R. ŠADŽIUS

- (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).
- (2) 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).
- (3) 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).
- (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).
- (7) 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).
- (8) 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).
- (9) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).
- (10) Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ L 306, 23.11.2011, p. 25).
- (11) Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).
- (12) 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).
- (13) 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).
- (14) 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).
- (15) 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).
- (16) 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).
- (17) 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).
- (18) 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).
- (19) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).
- (20) 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).