



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 February 2013

Interinstitutional File:

**2011/0276 (COD)
2011/0268 (COD)
2011/0273 (COD)
2011/0275 (COD)
2011/0274 (COD)**

**5609/13
ADD 1 REV 1**

**FSTR 4
FC 3
REGIO 8
SOC 45
AGRISTR 6
PECHE 24
CADREFIN 14
CODEC 136**

ADDENDUM 1 to NOTE

from : Presidency
to: Permanent Representatives Committee (part 2)/Council

No. prev. doc.: 13730/12, 15247/1/11 REV 1, 15253/1/11 REV 1, 15249/11, 15250/2/11 REV 2
No. Cion prop.: COM(2012) 496 final, COM(2011) 607 final/2, COM(2011) 611 final/2,
COM(2011) 614 final, COM(2011) 612 final/2

Subject: Cohesion Policy legislative package
 - Presidency compromise on recitals

Delegations will find attached a compromise text on recitals for the Common Provisions Regulation, the ERDF Regulation, the Cohesion Fund Regulation, the ESF Regulation and the ETC Regulation.

For the Common Provisions Regulation, the modifications highlighted in bold are compromise proposals that have been made to the original Commission text that was presented by the Commission on 6 October 2011, corrected by the Commission on 14 March 2012 and as amended by the Commission on 11 September 2012. Similarly, compromise modifications are also highlighted in bold for the Cohesion Fund Regulation, the ESF Regulation and the ETC Regulation, since the version presented by the Commission on 14 March 2012. For the ERDF Regulation the modifications highlighted in bold are those in comparison to the proposal presented by the Commission on 6 October 2011.

A. Common Provisions Regulation

Amended proposal for a

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national **p**arliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Having regard to the opinion of the Court of Auditors³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (1) Article 174 of the Treaty **on the Functioning of the European Union (TFEU)** provides that, in order to strengthen its economic, social and territorial cohesion, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, particular rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps. Article 175 **TFEU** requires that the Union would support the achievement of these objectives by action it takes through the European Agricultural Guidance and Guarantee Fund, Guidance Section, the European Social Fund, the European Regional Development Fund, the European Investment Bank and other instruments.
- (2) In line with the conclusions of the European Council of 17 June 2010, whereby the Union strategy for smart, sustainable and inclusive growth was adopted, the Union and Member States should implement the delivery of smart, sustainable and inclusive growth, while promoting harmonious development of the Union and reducing regional disparities.
- (3) In order to improve coordination and harmonise implementation of the Funds providing support under the cohesion policy, namely the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF), with the Funds for rural development, namely the European Agricultural Fund for Rural Development (EAFRD), and for the maritime and fisheries sector, namely the European Maritime and Fisheries Fund (EMFF), common provisions should be established for all these Funds (the "**European Structural and Investment Funds**"). In addition this Regulation contains provisions which are common for the ERDF, the ESF and the CF, but do not apply to the EAFRD and the EMFF. Due to the particularities that exist for each **European Structural and Investment Fund**, specific rules applicable to each **European Structural and Investment Fund** and to the European territorial cooperation goal under the ERDF should be specified in separate regulations.

- (4) As regards the Common Agricultural Policy (CAP), significant synergies have already been obtained by harmonising and aligning management and control rules for the first pillar (EAGF - European Agricultural Guarantee Fund) and the second pillar (EAFRD) of the CAP. The strong link between the EAGF and the EAFRD should therefore be maintained and the structures already in place in the Member States be sustained.
- (5) The outermost regions should benefit from specific measures and additional funding to offset the handicaps resulting from the factors referred to in article 349 **TFEU**.

(5bis) The northern sparsely populated regions should benefit from specific measures and additional funding to offset the severe and natural or demographic handicaps referred to in Article 2 of Protocol No. 6 of the Treaty of accession of Austria, Finland and Sweden.

- (6) To ensure correct and consistent interpretation of provisions and to contribute to the legal certainty of Member States and beneficiaries, it is necessary to define certain terms that are used in **this** Regulation.

(6bis) Where a time limit is set for the Commission to adopts or amends a decision, in accordance with this Regulation, the time limit for the adoption or amendment of such a decision should not include the period starting on the date in which the Commission has sent its observations to the Member State and lasting until the Member State has responded to those observations.

- (7) [...] This Regulation consists of three parts, of which the first **sets out the subject-matter** and definitions, the second contains rules applicable to all **European Structural and Investment Funds** and the third includes provisions applicable only to the ERDF, the ESF and the CF (the "Funds"). **Each specific regulation of the European Structural and Investment Funds may establish specific rules which are complementary to this Regulation but which should not be contradictory to the common provisions unless specifically provided for in this Regulation.**

- (8) Under Article 317 **TFEU**, and in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the European Union should be specified and the responsibilities of cooperation by the Member States clarified. Those conditions should enable the Commission to obtain assurance that Member States are using the **European Structural and Investment Funds** in a legal and regular manner and in accordance with the principle of sound financial management within the meaning of [...] Regulation (EU, Euratom) No **966/2012 of the European Parliament and of the Council of 25 October 2012** on the financial **rules** applicable to the general budget of the **Union** (hereinafter referred to as the "Financial Regulation"). Member States [...], at the appropriate territorial level, in accordance with the institutional, legal and financial framework **and the bodies designated by them for that purpose should be responsible for preparing and implementing programmes**. These **conditions** also ensure that attention is drawn to the need to ensure complementarity and consistency of **relevant** Union intervention, [...] **to respect the principle of proportionality and take into account the overall aim of reducing administrative burdens**.
- (9) For the Partnership **Agreement** and each programme respectively, a Member State should organise a partnership with the representatives of competent regional, local, urban and other public authorities, economic and social partners and **other relevant** bodies representing civil society, including environmental partners, non-governmental organisations and bodies responsible for promoting **social inclusion, gender** equality and non-discrimination, **as well as, where appropriate, the "umbrella organisations" of such bodies, authorities and organisations**. The purpose of such a partnership is to respect the principles of multi-level governance, **but also take account of subsidiarity and proportionality and the specificities of the Member States' different legal and institutional frameworks as well as to** ensure the ownership of planned interventions by stakeholders and build on the experience and **the** know-how of relevant actors. **The Member States should identify the most representative relevant partners, who should include the institutions, organisations and groups which can influence the preparation or be affected by the preparation and implementation of the programmes. In this context Member States may also identify, where appropriate, as relevant partners, "umbrella organisations" which are the associations, federations or confederations of relevant local, regional and urban authorities or other bodies in**

accordance with applicable national law and practice. The Commission shall be empowered to adopt a delegated act providing for a code of conduct in order to **facilitate the implementation of partnership with regard to ensuring the involvement of relevant partners in the preparation, implementation, monitoring and evaluation of Partnership Agreements** and programmes in a consistent manner. **In order to facilitate the involvement of partners in the preparation of the Partnership Agreement and the programmes for the period 2014-2020 the delegated act should not have retroactive effect and should not provide a basis for irregularities leading to financial corrections. The adopted delegated act should not enter into force earlier than the day of its adoption after the entry into force of this Regulation. The adopted delegated act should allow Member States to determine the most appropriate modalities for implementing the partnership in accordance with their legal and institutional frameworks as well as their national and regional competences, provided that its objectives, as laid down in this Regulation, are achieved.**

- (10) The activities of the **European Structural and Investment Funds** and the operations which they support should comply with applicable Union and **the related** national law which is directly or indirectly **implementing the provisions of this Regulation and the Fund-specific rules** [...].
- (11) In the context of its effort to increase economic, territorial and social cohesion, the Union should, at all stages of implementation of the **European Structural and Investment Funds**, aim at eliminating inequalities and promoting equality between men and women, as well as combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

- (12) The objectives of the **European Structural and Investment Funds** should be pursued in the framework of sustainable development and the Union's promotion of the aim of **preserving**, protecting and improving the environment as set out in Articles 11 and 191(1) of the Treaty, taking into account the polluter pays principle. **To this end** the Member States should provide information on the support for climate change objectives [in line with the ambition to devote at least 20% of the Union budget [...]]¹ using a methodology **based on the categories of intervention or measures** adopted by the Commission by implementing act **reflecting the principle of proportionality**.
- (13) In order to achieve the targets and objectives of the Union strategy for smart, sustainable and inclusive growth, the **European Structural and Investment Funds** should focus their support on a limited number of common thematic objectives. The precise scope of each of the **European Structural and Investment Funds** should be set out in Fund-specific rules and may be limited to only some of the thematic objectives defined in this Regulation.
- (14) In order to maximise the contribution of the **European Structural and Investment Funds** and to provide [...] strategic **orientation** to the programming process at the level of Member States and the regions, a Common Strategic Framework should be established. The Common Strategic Framework should facilitate sectoral and territorial coordination of Union intervention under the **European Structural and Investment Funds** and with other relevant Union policies and instruments **in line with the objectives and targets of the Union strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges**.
- (15) The Common Strategic Framework should therefore set out [...] **how the European Structural and Investment Funds will contribute to the objectives and targets of the Union's strategy for smart, sustainable and inclusive growth, the means** to address **key** territorial challenges, **the arrangements to promote the integrated use of European Structural and Investment Funds** [...], horizontal principles and cross-cutting policy objectives, **the means for coordination with other relevant Union policies and cooperation activities**.

¹ **Subject to review following MFF agreement.**

- (16) On the basis of the Common Strategic Framework, each Member State should prepare, in cooperation with its partners and in dialogue with the Commission, a Partnership **Agreement**. The Partnership **Agreement** should translate the elements set out in the Common Strategic Framework into the national context and set out firm commitments to the achievement of Union objectives through the programming of the **European Structural and Investment Funds**. **The Partnership Agreement should set out 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, arrangements to ensure effective implementation and arrangements for the partnership principle and an integrated approach to territorial development.**
- (17) Member States should concentrate support to ensure a significant contribution to the achievement of Union objectives in line with their specific national and regional development needs. *Ex ante* conditionalities **as well as a concise and exhaustive set of objective criteria for their assessment** should be defined to ensure that the necessary **prerequisites** for the effective **and efficient** use of Union support are in place. **To this end, an ex ante conditionality should apply to a priority of a given programme only when it has a direct and genuine link to and a direct impact on the effective and efficient achievement of the specific objectives for an investment priority or a Union priority, while not every specific objective is necessarily linked to an ex ante conditionality laid down in the Fund-specific rules.** The fulfilment of **the applicable** *ex ante* conditionalities should be assessed by the **Member State** in the framework of its **establishment** of the Partnership **Agreement** or programmes, **taking account of the principle of proportionality. The Commission shall verify the consistency and adequacy of this assessment in accordance with the principles of proportionality and subsidiarity and respecting national and regional competences to decide on the specific and adequate policy measures, including the content of relevant strategies.** In cases where there is a failure to fulfil an **applicable** *ex ante* conditionality **within the defined deadline**, the Commission should have the power to suspend **interim** payments to the **affected parts of the** programme **under precisely pre-defined conditions.**

(18) [A performance reserve should be foreseen and allocated in 2019 where milestones set in the performance framework have been attained. Due to their diversity and multi-country character, there should be no performance reserve for "European Territorial Cooperation" programmes.]¹

(18 bis) [The Commission should undertake a performance review based on a performance framework in cooperation with the Member States in [...] 2019. **This performance framework should be defined for each programme with a view to monitoring progress towards the objectives and targets set for each programme over the course of the programming period. In order to ensure that the Union budget is not used in a wasteful or inefficient way where there is evidence that a priority has seriously failed to achieve the milestones that relate to financial indicators, output indicators and key implementation steps set out in the performance framework due to clearly identified implementation weaknesses as previously communicated by the Commission and the Member State has failed to take the necessary corrective action,** the Commission should be able to suspend payments to the programme or, at the end of the programming period, apply financial corrections. **This must respect the principle of proportionality and take into account the absorption level and external factors contributing to failure. Financial corrections should not be applied where targets are not achieved because of significant socio-economic, environmental developments or implementation delays beyond the control of the Member State**². **Result indicators should not be taken into account for the purposes of suspensions or financial corrections.**

¹ **Subject to review following MFF agreement.**

² **Subject to review following MFF agreement.**

(19) [Establishing a closer link between cohesion policy and the economic governance of the Union will ensure that the effectiveness of expenditure under the **European Structural and Investment Funds** is underpinned by sound economic policies and that the **European Structural and Investment Funds** can, if necessary, be redirected to addressing the economic problems a **Member State** is facing. This process has to be gradual, starting with amendments to the Partnership **Agreement** and to the programmes in support of Council recommendations to address macroeconomic imbalances and social and economic difficulties. Where, despite the enhanced use of **European Structural and Investment Funds**, a Member State fails to take effective action in the context of the economic governance process, the Commission should have the right to suspend all or part of the payments and commitments. Decisions on suspensions should be proportionate and effective, taking into account the impact of the individual programmes for addressing the economic and social situation in the relevant Member State and previous amendments to the Partnership **Agreement**. When deciding on suspensions, the Commission should also respect equality of treatment between Member States, taking into account in particular the impact of the suspension on the economy of the Member State concerned. The suspensions should be lifted and funds be made available again to the Member State concerned as soon as the Member State takes the necessary action]¹.

¹ **Subject to review following MFF agreement.**

(20) **The European Structural and Investment Funds should be implemented through programmes covering the programming period in accordance with the Partnership Agreement. Programmes should be drawn up by Member States following transparent procedures, in accordance with the institutional and legal framework of each Member State. Member States and the Commission should cooperate to ensure coordination and consistency of programming arrangements for the European Structural and Investment Funds. As the content of programmes is closely interlinked with that of the Partnership Agreement, the programmes should be submitted, at the latest, within three months of the submission of the Partnership Agreement. A longer deadline should be foreseen for the submission of European territorial cooperation programmes in order to take into account the multi-country character of those programmes. In particular a distinction should be made between the core elements of the partnership agreement and operational programmes which should be subject to a Commission decision and other elements which Member States may themselves adopt.** Programming should ensure consistency with the Common Strategic Framework and Partnership **Agreement**, coordination **between the European Structural and Investment Funds** and with the other existing financial instruments and **the input of** the European Investment Bank **if relevant**.

(20 bis) With a view to ensuring consistency between programmes supported under different European Structural and Investment Funds, particularly in the context of ensuring a contribution to the Union strategy for smart, sustainable and inclusive growth, it is necessary to set out common minimum requirements as regards the content of the programmes, which may be complemented by Fund specific-rules to take into account the specific nature of each European Structural and Investment Fund.

(20ter) It is necessary to lay down clear procedures for the assessment, adoption and amendment of programmes by the Commission. In order to ensure consistency between the Partnership Agreement and programmes, it should be specified that programmes, with the exception of the European territorial cooperation programmes, may not be approved before the Commission decision approving the Partnership Agreement. In particular a distinction should be made between the core elements of the partnership agreement and operational programmes which should be subject to a Commission decision and other elements which Member States may themselves adopt. To reduce the administrative burden for Member States, any approval of an amendment of certain parts of the programme by the Commission should result automatically in an amendment of the relevant parts of the Partnership Agreement.

(20 quater) In order to optimise the added value from investments funded wholly or in part through the EU Budget in the field of research and innovation, synergies will be sought in particular between the operation of the European Structural and Investment Funds and Horizon 2020 whilst respecting their distinct objectives. Key mechanisms for achieving these synergies will be the recognition of simplified costs from Horizon 2020 for a similar operation and beneficiary and the possibility to combine funding from different Union instruments, including European Structural and Investment Funds and Horizon 2020, in the same project while avoiding double financing. In order to strengthen the research and innovation capacities of national and regional actors and to achieve the goal of building a "Stairway to excellence" in less developed regions, close synergies should be developed between the European Structural and Investment Funds and Horizon 2020 in all relevant programme priorities.

- (21) Territorial cohesion has been added to the goals of economic and social cohesion by the Treaty, and it is necessary to address the role of cities, functional geographies and sub-regional areas facing specific geographical or demographic problems. To this end, to better mobilise potential at a local level, it is necessary to strengthen and facilitate community-led local development [...]. **Community-led local development should be supported by the EAFRD which should be designated as Leader local development and may be supported by the other European Structural and Investment Funds as appropriate. A strategic approach at local level, for community-led local development should be ensured by support through local development strategies proposed by local action groups and selected under the responsibility of managing authorities concerned. In order to allow for sufficient time for the full implementation of these local development strategies a deadline should be established for the selection of the local development strategies supported under this Regulation.** Responsibility for **the design and** implementation of local development strategies should be given to local action groups representing the interests of the community, [...] **and minimum tasks to be fulfilled by the local actions groups should therefore be defined.**
- (21bis) **In order to facilitate a manageable approach to the integration of community-led local development into the programming process, it should be carried out under a single thematic objective to promote social inclusion and combat poverty, notwithstanding that actions financed as part of community-led local development may contribute to all other thematic objectives.**
- (22) Financial instruments are increasingly important due to their leverage effect on **European Structural and Investment Funds**, their capacity to combine different forms of public and private resources to support public policy objectives, and because revolving forms of finance make such support more sustainable over the longer term.

- (23) Financial instruments supported by the **European Structural and Investment Funds** should be used to address specific market needs in a cost effective way, in accordance with the objectives of the programmes, and should not crowd out private financing. The decision to finance support measures through financial instruments should be determined therefore on the basis of an *ex ante* **assessment which has established evidence of market failures or sub-optimal investment situations and the estimated level and scope of public investment needs. The essential elements of the ex ante analysis should be clearly defined in the regulation. Given the detailed nature of the assessment, provision should be made to conduct the analysis in stages and also to review and update the assessment during implementation.**
- (24) Financial instruments should be designed and implemented so as to promote substantial participation by private sector investors and financial institutions on an appropriate risk-sharing basis. To be sufficiently attractive to private sector, financial instruments need to be designed and implemented in a flexible manner, **including the use where applicable of preferential remuneration of private investors, or of public investors operating under the market economy principle, and taking account of market standards and provided that any State aid is limited to the minimum amount necessary to compensate for the lack of private capital available taking into account market failures or sub optimal investment situations.** Managing authorities should therefore decide on the most appropriate forms to implement financial instruments to address the specific needs of the target regions, in accordance with the objectives of the relevant programme, **the results of the ex ante analysis and applicable state aid rules.**
- (24 bis) As some beneficiaries receiving grant support may face difficulties, due to a market failure, to find a financing source to cover the co-financing amount required, it should be possible to combine financial instruments with grant support to the extent allowed under the applicable Union State aid rules. Specific conditions preventing double financing in such a case should be set out.**

(25) Managing authorities should have the **flexibility** to contribute resources from programmes to financial instruments set up at Union level **and managed directly or indirectly by the Commission**, or to instruments set up at **national**, regional, **transnational or cross-border level and managed by or under the responsibility of the managing authority**. Managing authorities should also have the possibility to implement financial instruments directly, through **existing or newly created** funds or through funds of funds **which are set up to contribute support from programmes to several bodies implementing financial instruments**.

(25 bis) In the interests of ensuring proportionate control arrangements and of safeguarding the added value of financial instruments, target companies should not be deterred by excessive administrative burdens. Audits and controls should therefore be carried out at the level of the bodies entrusted with the implementation of financial instruments and not at the level of final recipients other than in the case of suspected fraud. These bodies should therefore not impose record-keeping requirements on final recipients for records relevant for audits and controls.

(26) The amount of the resources paid at any time from the **European Structural and Investment Funds** to financial instruments should correspond to the amount necessary to implement planned investments and payments to final recipients, including management costs and fees [...]. **Accordingly, applications for interim payments should be phased. The amount to be paid as an interim payment should be subject to a maximum ceiling of 25 per cent of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement with subsequent interim payments conditional on the actual amounts spent under previous applications for interim payments.**

(27) It is necessary to lay down specific rules regarding the amounts to be accepted as eligible expenditure at closure, to ensure that the amounts, including the management costs and fees, paid from the **European Structural and Investment Funds** to financial instruments are effectively used for investments and payments to final recipients. **The rules should be sufficiently flexible to enable support of venture capital funds to the benefit of target companies. These rules should, therefore, be aligned with certain characteristics specific to equity-based instruments for enterprises, such as market practices in relation to the provision of follow-on finance in the field of venture capital funds, so that target enterprises can benefit from continued support by the European Structural and Investment Funds to such instruments following the end of the eligibility period under certain conditions laid down in this Regulation.**

(27 bis) It is also necessary to lay down specific rules regarding the reuse of resources attributable to the support from the **European Structural and Investment Funds until the end of the eligibility period and to lay down further rules regarding** the use of legacy resources after the closure of the programmes.

(27 ter) **As a general rule, the support from the European Structural and Investment Funds should not be used to finance projects which have already been physically completed or to refinance completed acquisitions. However, many large phased projects using debt finance will include an element of re-financing of existing debt to unlock future phases. In such cases it may be necessary to use the support from the European Structural and Investment Funds to reorganise a debt portfolio.**

(28) Member States should monitor programmes in order to review implementation and progress towards achieving the programme's objectives. To this end, monitoring committees should be set up **by the Member State, in line with their national rules and practices with** their composition and functions defined for **European Structural and Investment Funds**. Joint Monitoring Committees could be set up to facilitate coordination between the **European Structural and Investment Funds**. In order to ensure effectiveness, **a** monitoring committee should be able to issue **observations** to managing authorities regarding implementation of the programme and should monitor actions taken as a result of its **observations**.

- (29) Alignment of the monitoring and reporting arrangements of the **European Structural and Investment Funds** is necessary to simplify management arrangements at all levels. It is important to ensure proportionate reporting requirements but also the availability of comprehensive information on progress made at key review points. Therefore it is necessary that reporting requirements reflect information needs in given years and are aligned with the timing of the performance reviews.
- (30) With a view to monitoring progress of programmes, an annual review meeting should take place between the Member State and the Commission. The Member State and the Commission should however be able to agree not to organize the meeting in order to avoid unnecessary administrative burden.
- (31) In order for the Commission to monitor progress towards achieving Union objectives, Member States should submit progress reports on the implementation of their Partnership **Agreements**. On the basis of such reports, the Commission should prepare a strategy report on progress in 2017 and 2019.
- (32) It is necessary to evaluate the effectiveness, efficiency and impact of assistance from the **European Structural and Investment Funds** in order to improve the quality of implementation and design of programmes, and to determine the impact of programmes in relation to the targets for the Union strategy for smart sustainable and inclusive growth and **having regard to the size of the programme** in relation to GDP and unemployment **of the programme area concerned**, where relevant. The responsibilities of Member States and the Commission in this regard should be specified.
- (33) In order to improve the quality and design of each programme, and verify that objectives and targets can be reached, an *ex ante* evaluation of each programme should be carried out.
- (34) An evaluation plan should be drawn up by the [...] **managing authority or Member State and may cover more than one programme**. During the programming period managing authorities should **ensure that** evaluations **are carried out** to assess the effectiveness and impact of a programme. The monitoring committee and the Commission should be informed about the results of evaluations to facilitate management decisions.

- (35) *Ex post* evaluations should be carried out in order to assess the effectiveness and efficiency of the **European Structural and Investment Funds** and their impact on the overall goals of the **European Structural and Investment Funds** and the Union strategy for smart, sustainable and inclusive growth.
- (36) It is useful to specify the types of action that may be undertaken at the initiative of the Commission and of the Member States as technical assistance with support from the **European Structural and Investment Funds**. **At the initiative of, or on behalf of the Commission, technical assistance can support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures necessary for implementing this Regulation. At the initiative of a Member State, technical assistance can support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit.**
- (37) In order to ensure an effective use of Union resources, and avoid the over- financing of revenue generating operations, [...] **a range of equivalent methods to determine the net revenue generated by an operation should be set out, including a simplified approach, based on flat rates for sectors or subsectors specified in this regulation. The flat rates should be based on historical data available to the Commission, the potential for cost recovery and the polluter-pays principle where applicable. There should also be provision to extend flat rates to new sectors, introduce subsectors or review the rates for future projects when new data becomes available by means of a delegated act. The use of flat rates may be particularly suitable in the case of ICT, research, development and innovation, and energy efficiency.**
- The regulation should provide methods, to be chosen by the managing authority, for a sector, subsector, or type of operations in relation to determining, deducting and reporting on net revenues. In addition, to ensure the application of the principle of proportionality and to take account of other regulatory and contractual provisions applicable, it is necessary to set out the exemptions to these rules.**

To reflect the different nature of projects financed from ESF, the net revenue should be deducted from eligible expenditure during the implementation of operations supported solely by the ESF. The same approach should be used, in accordance with principle of proportionality, for ERDF or Cohesion Fund operations to which other methods to account for net revenues have not been applied in accordance with this Regulation.

(37bis) Public Private Partnerships ("PPPs") can be an effective means of delivering projects that ensure the achievement of public policy objectives by bringing together different forms of public and private resources. In order to facilitate the use of European Structural and Investment Funds to support operations structured as PPPs this Regulation should take account of certain characteristics specific to PPPs by adapting some of the common provisions.

- (38) The starting and closing dates for the eligibility of expenditure should be defined so as to provide for a uniform and equitable rule applying to the implementation of the **European Structural and Investment Funds** across the Union. In order to facilitate the execution of programmes, it is appropriate to establish that the starting date for the eligibility of expenditure may be prior to 1 January 2014 if the Member State concerned submits a programme before that date. With a view to ensuring an effective use of **European Structural and Investment** Funds and reducing the risk to the EU budget, it is necessary to put in place restrictions on support for completed operations.
- (39) In accordance with the principle of subsidiarity and subject to exceptions provided for in Regulation(s) (EU) No [...] [ERDF, ESF, CF, ETC, EAFRD, EMFF Regulations], Member States should adopt national rules on the eligibility of expenditure.
- (40) With a view to simplifying the use of the **European Structural and Investment Funds** and reducing the risk of errors, while providing for differentiation where needed to reflect the specificities of policy, it is appropriate to define the forms of support, harmonized conditions of reimbursement of grants and **repayable assistance**, flat rate financing, specific eligibility rules for grants **and repayable assistance** and specific conditions on the eligibility of operations depending on location.

- (41) To ensure the effectiveness, fairness and sustainable impact of the intervention of the **European Structural and Investment Funds**, there should be provisions guaranteeing that investments in businesses and infrastructures are long-lasting and prevent the **European Structural and Investment Funds** from being used to undue advantage. Experience has shown that a period of five years is an appropriate minimum period to be applied, except where State aid rules foresee a different period. **Nevertheless, and in line with the principle of proportionality, a more limited period of three years may be justified where the investment concerns the maintenance of investments or jobs created by SMEs.** It is appropriate to exclude actions supported by the ESF and those not entailing productive investment or investment in infrastructure from the general requirement of durability, unless such requirements are derived from applicable State aid rules, and to exclude contributions to or from financial instruments. **Sums unduly paid should be recovered and be subject to procedures applicable to irregularities.**
- (42) Member States should adopt adequate measures to guarantee the proper set up and functioning of their management and control systems to give assurance on the legal and regular use of the **European Structural and Investment Funds**. The obligations of Member States as regards the management and control systems of programmes, and in relation to the prevention, detection and correction of irregularities and infringements of Union law should therefore be specified.
- (43) In accordance with the principles of shared management, Member States **and the Commission should be responsible for the management and control of programmes.** **Member states** should have the primary responsibility, through their management and control systems, for the implementation and control of the operations in programmes. In order to strengthen the effectiveness of the control over the selection and implementation of operations and the functioning of the management and control system, the functions of the managing authority should be specified.

- (44) **[...] Member States should fulfil the management, control and audit obligations and assume the responsibilities as laid down in the rules on shared management set out in this Regulation, the Financial Regulation and Fund specific rules. Member States should ensure that, in accordance with the conditions set out in this Regulation, an effective arrangement for the examination of complaints is in place and should inform the Commission of the results on request.**
- (45) The powers and responsibilities of the Commission to verify the effective functioning of the management and control systems, and to require Member State action, should be laid down. The Commission should also have the power to carry out audits focused on issues relating to sound financial management in order to draw conclusions on the performance of **European Structural and Investment** Funds.
- (46) Union budget commitments should be effected annually. In order to ensure effective programme management, it is necessary to lay down common rules for interim payment requests, [...] and the final balance, without prejudice to specific rules that are required for each [...] **European Structural and Investment Fund**.
- (47) [The pre-financing payment at the start of programmes ensures that the Member State has the means to provide support to beneficiaries in the implementation of the programme from programme adoption. Therefore, provisions should be made for initial pre-financing amounts from the **European Structural and Investment Funds**. Initial pre-financing should be totally cleared at closure of the programme]¹.

¹ **Subject to review following MFF agreement.**

- (48) In order to safeguard the Union's financial interests, there should be measures limited in time that allow the authorising officer by delegation to interrupt payments where there is **clear** evidence to suggest a significant deficiency in the functioning of the management and control system, evidence of irregularities linked to a payment application, or a failure to submit documents for the purpose of **examination and acceptance** of accounts. **The duration of the interruption period should be up to nine months, with the agreement of the Member State, to allow sufficient time to resolve the situation with a view to avoid having to resort to suspensions.**
- (49) [...]
- (50) In order to safeguard the Union budget, it may be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of applicable Union or national law can lead to financial corrections by the Commission. In order to ensure that financial corrections which the Commission may impose on Member States are related to the protection of the EU's financial interests, they should be confined to cases where the breach of Union or **the related national implementing law concerns, including serious deficiencies in the Management and Control systems of Member States,** [...] the eligibility, regularity, management or control of operations and the corresponding expenditure **declared to the Commission.** To ensure proportionality it is important that the Commission considers the nature and the gravity of the breach in deciding **the application and** the amount of financial correction.
- (51) In order to encourage financial discipline, it is appropriate to define the arrangements for decommitment of any part of the budget commitment in a programme, in particular where an amount may be excluded from decommitment, notably when delays in implementation result from circumstances which are independent of the party concerned, abnormal or unforeseeable and whose consequences cannot be avoided despite the diligence shown **as well as in a situation in which a request for payment has been made whose reimbursement has been interrupted or suspended.**

- (52) Additional general provisions are necessary in relation to the specific functioning of the Funds. In particular, in order to increase their added value, and to enhance their contribution to the priorities of the Union strategy for smart, sustainable and inclusive growth, the functioning of **the** Funds should be simplified and concentrated on the goals of "Investment for growth and jobs" and "European territorial cooperation".
- (53) Additional provisions for the specific functioning of the EAFRD and the EMFF are set out in the relevant sector-specific legislation.
- (54) [In order to promote the Treaty objectives of economic, social and territorial cohesion, the "Investment for growth and jobs" goal should support all regions. To provide balanced and gradual support and reflect the level of economic and social development, resources under that goal should be allocated from the ERDF and the ESF among the less developed regions, the transition regions and the more developed regions according to their gross domestic product (GDP) per capita in relation to the EU average. In order to ensure the long-term sustainability of investment from the **ERDF and the ESF**, regions whose GDP per capita for the 2007-2013 period was less than 75% of the average of the EU-25 for the reference period but whose GDP per capita has grown to more than 75% of the EU-27 average should receive at least two thirds of their 2007-2013 allocation. Member States whose per capita gross national income (GNI) is less than 90 % of that of the Union average should benefit under the "Investment for growth and jobs" goal from the CF]¹.
- (55) Objective criteria should be fixed for designating eligible regions and areas for support from the Funds. To this end, the identification of the regions and areas at Union level should be based on the common system of classification of the regions established by Regulation (EC) No 1059/2003 of the European Parliament and the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)².

¹ **Subject to review following MFF agreement.**

² OJ L 154, 21.6.2003, p. 1.

(56) In order to set out an appropriate financial framework, the Commission should establish, by means of implementing acts, the indicative annual breakdown of available commitment appropriations using an objective and transparent method with a view to targeting the regions whose development is lagging behind, including those receiving transitional support.

(57) It is necessary to fix the limits of those resources for the "Investment for growth and jobs" goal and to adopt objective criteria for their allocation to regions and Member States. In order to encourage the necessary acceleration of development of infrastructure in transport and energy as well as information and communication technologies across the Union, a Connecting Europe Facility should be created. **Member States should concentrate support to ensure sufficient investment is targeted at youth, employment, knowledge and social inclusion, thus ensuring an adequate share of investment on the thematic objectives supported by the ESF.**

(57bis) [The allocation of the annual appropriations from the Funds and the amounts transferred from the Cohesion Fund to the Connecting Europe Facility to a Member State should be limited to a ceiling that would be fixed taking into account the capacity of that particular Member State to absorb these appropriations.

In addition, in line with the headline target on poverty reduction, it is necessary to reorient the scheme **of aid** for the most deprived persons to promote social inclusion [...]. A mechanism is envisaged which transfers resources to this instrument and ensures that these will be constituted from ESF allocations through an implicit corresponding decrease of the minimum percentage of the **funding allocations** to be allocated to the ESF in each country]¹.

(58) [In order to strengthen the focus on results and achievement of the Europe 2020 objectives and targets, seven per cent of the resources for the "Investment for growth and jobs" goal should be set aside as a performance reserve for each Fund, and category of region in each Member State]².

¹ **Subject to review following MFF agreement.**

² **Subject to review following MFF agreement.**

- (59) As regards the Funds and with a view to ensuring an appropriate allocation to each category of regions, resources should not be transferred between less developed, transition and more developed regions except in duly justified circumstances linked to the delivery of one or more thematic objectives and for no more than **3** % of the total appropriation for that category of region.
- (60) In order to ensure a genuine economic impact, support from the Funds should not replace public expenditure or equivalent structural expenditure by Member States under the terms of this Regulation. In addition, so that the support from the Funds takes into account a broader economic context, the level of public expenditure should be determined with reference to the general macroeconomic conditions in which the financing takes place based on the indicators provided in the Stability and Convergence Programmes submitted annually by Member States in accordance with Regulation (EC) No. 1466/1997 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies¹. Verification by the Commission of the principle of additionality should concentrate on the Member States in which less developed [...] regions cover at least 15% of the population because of the scale of the financial resources allocated to them.
- (61) It is necessary to lay down additional provisions concerning the programming, management, monitoring and control of operational programmes supported by the Funds **in order to strengthen the focus on results.** [...] . **In particular, it is necessary to set out detailed requirements for the content of then operational programmes. This should facilitate the presentation of a** consistent intervention logic to tackle the development needs identified, [...] **to** set out the framework for performance assessment [...] **and** to underpin the effective and efficient implementation of **the** Funds. **While as a general principle a priority axis should cover one thematic objective, one Fund and one category of**

¹ OJ L 209, 2.8.1997, p. 1.

regions, it is necessary to provide for cases where the combination of thematic objectives, Funds or categories of regions within a priority axis increases the impact and effectiveness of the Funds. Simplified models should be applied to technical assistance priority axes.

(61bis) In circumstances where a Member State prepares no more than one programme per Fund, resulting in a situation where programmes and the Partnership Agreement are both prepared at national level, specific arrangements should be set out to ensure the complementarity of these documents.

(61ter) In order to reconcile the need for concise operational programmes setting out clear commitments by the Member State and the need to allow for flexibility for adjustment to changing circumstances, procedures should be provided that allow the modification of certain non-essential elements of the operational programmes at national level without a decision by the Commission.

(62) With a view to improving complementarities and simplifying implementation, it should be possible to combine support from the CF and the ERDF with support from the ESF in joint operational programmes under the "**Investment for** growth and jobs" goal.

(63) Major projects represent a substantial share of Union spending and are frequently of strategic importance with respect to the achievement of the Union strategy for smart, sustainable and inclusive growth. Therefore it is justified that operations **above certain thresholds** continue to be subject to **specific** approval **procedures** under this regulation. **The threshold should be established in relation to total eligible cost after taking account of the expected net revenues with a higher threshold for transport projects due to the typically larger size of investments in this sector. To ensure clarity, it is appropriate to define the content of a major project application for this purpose.**

In order to promote the preparation and implementation of major projects on a sound, economic and technical basis, this Regulation encourages the early involvement of independent experts supported by technical assistance by the Commission, or in agreement with the Commission, by other independent experts in the preparation of such projects.

Where the early independent quality review provides clear statements on the major project's feasibility and economic viability, the Commission should be able to rely on the assessment of experts. However, the Commission should be able to refuse support if it establishes a significant weakness in the independent quality review.

In cases where an early independent quality review has not been undertaken, the Commission should be able to refuse support for a major project where the granting of such support is not justified on the basis of the information provided.

For the sake of continuity of implementation, in order to avoid unnecessary administrative burden as well as for alignment with the Commission Decision on Guidelines on closure of the 2007-2013 programming period, phasing provisions are established for major projects approved under Council Regulation (EC) No 1083/2006 whose implementation period is expected to span over to the programming period governed by this regulation. These provisions, applicable under certain conditions, enable a fast track procedure for the notification and approval of a second or subsequent phase of a major project for which the preceding phase or phases were approved by the Commission until 31 December 2015. The individual phases of the phased operation, serving the same overall objective, thus will be implemented according to the rules of the respective programming periods.

- (64) In order to give Member States the option of implementing part of an operational programme using a result-based approach, it is useful to provide for a joint action plan comprising a set of actions to be carried out by a beneficiary to contribute to the objectives of the operational programme. In order to simplify and reinforce the result orientation of the Funds the management of the joint action plan should be exclusively based on jointly agreed milestones, outputs and results as defined in the Commission decision adopting the joint action plan. Control and audit of a joint action plan should also be limited to the achievement of these milestones, outputs and results. Consequently, it is necessary to lay down rules on its preparation, content, adoption, financial management and control of joint action plans.
- (65) Where an urban or territorial development strategy requires an integrated approach because it involves investments under more than one priority axis of one or several operational programmes, action supported by the Funds, **which may be complemented with financial support from the EAFRD or the EMFF, may** be carried out as an integrated territorial investment within an operational programme **or programmes**.
- (66) It is necessary to adopt specific rules in relation to the functions of the monitoring committee and the annual reports on implementation of operational programmes supported by the Funds. Additional provisions for the specific functioning of the EAFRD are set out in the relevant sector specific legislation.
- (67) To ensure the availability of essential and up to date information on programme implementation, it is necessary that Member States provide the Commission with the key data on a regular basis. In order to avoid an additional burden on Member States, this should be limited to data collected continuously, and the transmission should be performed by way of electronic data exchange.
- (67bis) In order to reinforce the monitoring of the progress of the implementation of the Funds and to facilitate financial management, it is necessary to ensure the availability of basic financial data on the progress of implementation in a timely manner.**

- (68) In accordance with Article 175 TFEU, the Commission submits Cohesion Reports to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving the Union's economic, social and territorial cohesion. It is necessary to lay down the content of this report.
- (69) It is considered appropriate that the Commission, in cooperation with the Member States, carries out the *ex post* evaluation for the Funds to obtain information at the appropriate level on the results and impact of interventions financed. Specific provisions are also needed to establish a procedure for the approval of the evaluation plans for the Funds.
- (70) It is important to bring the achievements of the [...] Funds to the attention of the general public. Citizens have the right to know how the Union's financial resources are invested. The responsibility to ensure that the appropriate information is communicated to the public should lie with both the managing authorities and the beneficiaries. To ensure more efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation shall also contribute to cover the institutional communication of the political priorities of the European Union as far as they are related to the general objectives of this Regulation.
- (71) For the purpose of ensuring a wide dissemination of information about the achievements of the Funds and the role of the Union therein and to inform potential beneficiaries about funding opportunities, detailed rules taking account of the size of the operational programmes and in accordance with the principle of proportionality about information and communication measures, as well as certain technical characteristics of such measures, should be defined in this Regulation.

(71bis) In order to ensure that the allocation for each Fund is concentrated on the Union strategy for smart, sustainable and inclusive growth, it is necessary to establish ceilings for the allocation to technical assistance of the Member State. It is also necessary to ensure that the legal framework for the programming of technical assistance should facilitate the creation of streamlined delivery arrangements in a context where Member States implement multiple Funds in parallel and may comprise several categories of regions.

- (72) With a view to strengthening accessibility and transparency of information about funding opportunities and project beneficiaries, in each Member State a single website or website portal providing information on all the operational programmes, including the lists of operations supported under each operational programme, should be made available.
- (73) It is necessary to determine the elements for modulating the co-financing rate from the Funds to operational programmes, in particular, to increase the multiplier effect of Union resources. It is also necessary to establish the maximum rates of co-financing by category of region in order to ensure respect of the principle of co-financing through an appropriate level of national support.
- (74) It is necessary for Member States to designate a managing authority, a certifying authority and a functionally independent auditing authority for each operational programme. To provide flexibility for Member States in the set up of control systems, it is appropriate to provide the option for the functions of the certifying authority to be carried out by the managing authority. The Member State should also be allowed to designate intermediate bodies to carry out certain tasks of the managing authority or the certifying authority. The Member State should in that case lay down clearly their respective responsibilities and functions.
- (75) The managing authority bears the main responsibility for the effective and efficient implementation of the Funds and thus fulfils a substantial number of functions related to programme management and monitoring, financial management and controls as well as project selection. Its responsibilities and functions should be set out.

- (76) The certifying authority should draw up and submit to the Commission payment applications. It should draw up the annual accounts, certifying the completeness, accuracy and veracity of the annual accounts and that the expenditure entered in the accounts complies with applicable Union and national rules. Its responsibilities and functions should be set out. **It should be clearly specified that Member States may choose non-statistical, risk-based sampling instead of statistical sampling methods on certain conditions laid down in this Regulation.**
- (77) The audit authority should ensure that audits are carried out on the management and control systems, on an appropriate sample of operations and on the annual accounts. Its responsibilities and functions should be set out.
- (78) In order to take account of the specific organisation of the management and control systems for **each Fund** and the need to ensure a proportionate approach, specific provisions are required for the **designation** of the managing authority and the certifying authority. **In order to avoid unnecessary administrative burden, the ex ante verification of compliance with the designation criteria indicated in this Regulation should be limited to the managing and certifying authority, and on certain conditions laid down in this Regulation no additional audit work should be required when the system is essentially the same as in the 2007-2013 period. There should be no requirement to approve the compliance assessment result by the Commission. However, in order to increase legal certainty, Member States should have the option to submit the compliance documents to the Commission on certain conditions laid down in this Regulation. There should be no requirement to conduct any additional audit and controls or to create any additional institutions for the purpose of monitoring compliance with the designation criteria.**
- (79) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in this field should be increased and criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it should obtain from national audit bodies.

- (80) In addition to common rules on financial management, additional provisions are necessary for **each Fund**. In particular, with a view to ensuring reasonable assurance for the Commission prior to the **acceptance** of accounts, applications for interim payments should be reimbursed at a rate of 90 % of the amount resulting from applying the co-financing rate for each priority axis as laid down in the decision adopting the operational programme to the eligible expenditure for the priority axis. The outstanding amounts due should be paid to the Member States upon [...] **acceptance** of accounts, provided that provided that [...] **the Commission is able to conclude that the accounts are complete, accurate and true.**
- (81) [...]. **Beneficiaries should receive the support in full as soon as possible. Initial and Annual** pre-financing [...] should be foreseen to ensure that Member State have sufficient means to [...] **prepare and implement programmes.** **Annual** pre-financing should be cleared each year with the **acceptance** of accounts.
- (81bis) **To reduce the risk of irregular expenditure being declared, it should be possible for a certifying authority, without any need for additional justification, to include the amounts which require further verification in an interim payment application after the accounting year in which they were entered into its accounting system.**
- (82) To ensure the appropriate application of the general rules on decommitment, the rules established for the Funds should detail how the deadlines for decommitment are established and how the respective amounts are calculated.
- (82bis) **In compliance with the requirements referred to in Article 59 of the Financial Regulation¹ and to elaborate the consequences of these requirements on the financial management of the Funds, it is necessary to set out clear procedures for the examination and acceptance of accounts.**

¹ OJ L 298, 26.10.2012, p.1.

- (83) It is necessary to specify the detailed procedure for the **examination and acceptance** of accounts applicable to the Funds to ensure a clear basis and legal certainty for these arrangements. It is important to envisage a limited possibility for the Member State to define a provision in its annual accounts for an amount, which is subject to an ongoing procedure with the audit authority. **It should be possible in the audit opinion accompanying the accounts to exclude such amounts as well as to take account of the corrections made to reflect the results of the audit based on an appropriate sample of operations.**
- (84) **[...] . In order to reduce administrative burden on beneficiaries, specific time limits should be set out during which they would be obliged to keep documents following submission of expenditure or completion of an operation. In accordance with the principle of proportionality, the period for keeping the documents should be differentiated depending on the total eligible expenditure of an operation.**
- (84bis) As accounts are verified and accepted every year, a significant simplification of the closure procedure should be introduced. The final closure of the programme should therefore be based only on the documents relating to the final accounting year and the final implementation report, without any need to prepare any additional documents.**
- (85) In order to safeguard the Union's financial interests and provide the means to ensure effective programme implementation, there should be measures allowing for the suspension by the Commission of payments at the level of priority axis or operational programme.
- (86) It is appropriate to lay down the specific arrangements and procedures for financial corrections by Member States and by the Commission in respect of the Funds to provide legal certainty for Member States **respecting the principle of proportionality.**

- (86bis) **It is necessary to establish a legal framework which provides robust management and control systems at national and regional level and an appropriate division of roles and responsibilities in the context of shared management. The role of the Commission should therefore be specified and clarified and proportionate rules set out for the application of financial corrections by the Commission.**
- (87) The frequency of audits on operations should be proportionate to the extent of the Union's support from the Funds. In particular, the number of audits carried out should be reduced where the total eligible expenditure for an operation does not exceed EUR 200 000. Nevertheless, it should be possible to carry out audits at any time where there is evidence of an irregularity or fraud, or, following closure of a completed operation, as part of an audit sample. **With a view to alleviating the administrative burden on beneficiaries, the Commission should in the first instance review the audit trail of the audit authority or take part in on the spot audits of the audit authority. The Commission should only carry out a re-performance of the audit activity where it does not obtain necessary assurance as to the effective functioning of the audit authority by these means.** In order that the level of auditing by the Commission is proportionate to the risk, the Commission should be able to reduce its audit work in relation to operational programmes where there are no significant deficiencies or where the audit authority can be relied on. **In order to reduce the administrative burden on beneficiaries, specific rules should be introduced to reduce the risk of overlap between audits of the same operations by various institutions, namely Court of Auditors, the Commission or the audit authority.**
- (88) In order to supplement and amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 **TFEU** should be delegated to the Commission in respect of a code of conduct on the objectives and criteria to support the implementation of partnership, [...] additional rules on the allocation of the performance reserve, [...], **specific** rules concerning [...] **purchase of land and combination of technical assistance for financial instruments**, the arrangements for management and control **and audit of such instruments** the rules on payment requests, and establishment of a system of capitalisation of annual instalments **for financial instruments**, the **technical adjustment and** definition of the flat rate for **net** revenue generating operations **in the**

sectors specified in this Regulation as well as any other sectors and subsectors not included in Annex XXX, some specific aspects related to PPPs, [...] and the criteria for establishing the level of financial correction to be applied **and the criteria to be used for the assessment of serious deficiencies that might lead to financial corrections as well as the main types of such deficiencies.** [...] It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

- (89) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and **to the** Council.
- (90) The Commission should be empowered to adopt, by means of implementing acts, as regards all **European Structural and Investment Funds**, decisions approving **the elements of Partnership Agreements**, [decisions on **the programmes and priorities which may benefit from** the allocation of the performance reserve]¹, decisions suspending payments linked to Member States' economic policies, and, in the case of decommitment, decisions to amend decisions adopting programmes; and as regards the Funds, decisions identifying the regions and Member States fulfilling the Investment for growth and jobs criteria, decisions setting out the annual breakdown of commitment appropriations to the Member States, [decisions setting out the amount to be transferred from each Member State's CF allocation to the Connecting Europe Facility, decisions setting out the amount to be transferred from each Member State's **ERDF and ESF** allocation for **aid** for deprived people]², **decision whether or not to carry out a financial correction in the case of non-compliance with additionality**, decisions adopting and amending operational programmes, decisions on major projects, decisions on joint action plans, **decisions on non-acceptance of the accounts and the amount chargeable if the accounts were not accepted**, decisions suspending payments and decisions on financial corrections.

¹ **Subject to review following MFF agreement.**

² **Subject to review following MFF agreement.**

(91) In order to ensure uniform conditions for the implementation of this Regulation, the implementing powers relating to the methodology concerning climate change objectives, [...] **conditions concerning the model to be used for information submitted with payment applications for** financial instruments, **methodology for calculating management costs and fees for financial instruments**, the uniform conditions concerning the monitoring and provision of monitoring information for financial instruments, **annual plans of actions to be financed from the technical assistance at the initiative of the Commission**, the methodology for the calculation of **discounted** net revenue for **net** revenue-generating projects, the electronic data exchange system between the Member State and the Commission, the model of operational programme for the Funds, the nomenclature for the categories of intervention, the format for information on major projects and methodology to be used in carrying out the cost-benefit analysis **and review of** major projects, the model for the joint action plan, the model of the annual and final implementation reports, certain technical characteristics of information and publicity measures and related instructions, **the reporting modalities and formalities on irregularities**, rules on the exchange of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies, **the model for the report and opinion of the independent audit body and the description of functions of the managing, and where appropriate, certifying authority**, the model **for the statement of** management **responsibilities**, the models for the audit strategy, opinion and annual control report and methodology for the sampling method, the rules concerning use of data collected during audits, and the model for payment applications **and the model of the accounts, methods and criteria for data carriers, methodology for applying flat rates or extrapolated financial corrections should be conferred on the Commission. Those powers** should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.

¹ OJ L 55, 28.2.2011, p.13.

- (92) This Regulation replaces Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund [...]. That Regulation should **therefore be** repealed.
- Nevertheless, this Regulation should not affect the continuation or modification of the projects concerned, until their closure, or of assistance approved by the Commission on the basis of Regulation (EC) No 1083/2006 or any other legislation applying to that assistance on 31 December 2013. Applications made under Council Regulation (EC) No 1083/2006 should therefore remain valid. Special transitional rules should be also laid down by way of derogation from article 59(1)b of Council Regulation (EC) No 1083/2006 as to when a managing authority can continue to carry out the functions of the certifying authority for operational programmes, implemented under the previous legislative framework, for the use of Commission assessment in accordance with Article 73(3) of the Council Regulation (EC) No 1083/2006 when applying article 113(5) and concerning the approval procedure of major projects under Article 92bis(1) point a.**
- (93) Since the objective of this Regulation, namely to **strengthen economic, social and territorial cohesion cannot be sufficiently achieved by the Member States by reason of the extent of the disparities between the levels of development of the various regions and the backwardness of the least favoured regions and the limit on the financial resources of the Member States and regions and can therefore** be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve **those objectives**.
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B. European Social Fund

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the European Social Fund and repealing Regulation (EC) No 1081/2006

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 164 thereof,

Having regard to the proposal from the European Commission¹,

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

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No [...] **[CPR]** establishes the framework for action by the European Social Fund (ESF), the European Regional Development Fund (ERDF), the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and lays down, in particular, the thematic objectives, the principles and the rules concerning programming, monitoring and evaluation, management and control. It is therefore necessary to specify the mission and scope of the European Social Fund, together with the related investment priorities addressing the thematic objectives, and to lay down specific provisions concerning the type of activities which may be financed by the ESF.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

- (2) The ESF should improve employment opportunities, promote education, **skills** and life-long learning and develop active inclusion policies in accordance with the tasks entrusted to the ESF by Article 162 of the Treaty **on the Functioning of the European Union (TFEU)**, and thereby contribute to economic, social and territorial cohesion in accordance with Article 174 **TFEU**. In accordance with Article 9 **TFEU**, the ESF should take into account requirements linked to the promotion of a high level of employment, [...] the fight against social exclusion, and a high level of education **and** training [...].
- (3) The European Council of 17 June 2010 called for all common policies, including cohesion policy, to support the Europe 2020 Strategy for smart, sustainable and inclusive growth"¹. In order to ensure the full alignment of the ESF with the objectives of this strategy, particularly as regards employment, education, and the fight against social exclusion, the ESF should support Member States [...] **taking account of the relevant Integrated Guidelines and relevant country-specific recommendations adopted in accordance with Article 121(2) of the Treaty on the Functioning of the European Union and relevant Council recommendations** adopted in accordance with Article [...] 148(4) of Treaty **on the Functioning of the European Union and where appropriate at national level, the national reform programme**. It should also contribute to **relevant aspects of** the implementation of the flagship initiatives, with special regard to the "Agenda for New Skills and Jobs"², "Youth on the Move"³, and the "European Platform against Poverty and Social Exclusion"⁴. It **should** also support **relevant** activities in the "Digital Agenda"⁵ and the "Innovation Union"⁶ initiatives.

¹ COM(2010) 2020 final, 3.3.2010

² COM(2010) 682 final, 23.11.2010

³ COM(2010) 477 final, 15.09.2010

⁴ COM(2010) 758 final, 16.12.2010

⁵ COM(2010) 245 final/2, 26.8.2010

⁶ COM(2010) 546 final, 6.10.2010

- (4) The European Union is confronted with structural challenges arising from economic globalisation, technological change and an increasingly ageing workforce and growing skills and labour shortages in some sectors and regions. They have been compounded by the recent economic and financial crisis, which has resulted in increased levels of unemployment, hitting in particular young people and other vulnerable groups, such as migrants. The ESF should aim to promote employment and support labour mobility, invest in education, skills and life-long learning, promote social inclusion and combat poverty, **primarily by improving access to the labour market**. In promoting the better functioning of labour markets by enhancing the transnational geographical mobility of workers, the ESF should, **where appropriate**, support European Employment Services (EURES activities) in relation to recruitment and the related information, advice and guidance services at national and cross-border level.
- (5) In addition to these priorities, in the less developed **and transition** regions **of** Member States, and with a view to increasing economic growth and employment opportunities, the efficiency of public administration should be improved and the institutional capacity of stakeholders delivering employment, education and social policies should be strengthened.
- (6) At the same time, it is crucial to support the development and competitiveness of European small and medium-sized enterprises and to ensure that people can adapt, through acquiring appropriate skills and through lifelong learning opportunities, to new challenges such as the shift to a knowledge-based economy, the digital agenda, and the transition to a low-carbon and more energy-efficient economy. By pursuing its primary thematic objectives, the ESF should contribute to addressing these challenges. In this context, the ESF should support the labour force transition towards greener skills and jobs, **including those** in the energy efficiency, renewable energy and sustainable transport sectors [...].

- (7) The ESF should contribute to the Europe 2020 Strategy, ensuring greater concentration of support on the priorities of the European Union. **Investment priorities shall set out detailed objectives, which are not mutually exclusive, to which the ESF shall contribute. These investment priorities should form the basis for the definition of specific objectives within programmes that take into account the needs and characteristics of the programme area.**

The ESF should, in particular, increase its support for [...] **promoting employment and fostering labour mobility, promoting** social **in**clusion and **combating** poverty **and investing in education, skills and lifelong learning. Taking into account the ERDF resources allocated to the same purpose a minimum allocation should be set to promote social inclusion and combat poverty.** According to the level of development of the supported regions **and the extent to which the operational programme covers the territory of a Member State,** the choice and number of investment priorities for ESF support should also be limited.

- (8) In order to ensure closer monitoring and improved assessment of the results achieved at European level by actions supported by the ESF, a common set of output and result indicators should be established **in this Regulation. Those indicators should correspond to the investment priority and type of action supported in accordance with this Regulation and the relevant provisions of Regulation (EU) No [...]/2012 [CPR]. Those indicators should be complemented where necessary by programme-specific result and/or output indicators.**
- (9) Efficient and effective implementation of actions supported by the ESF depends on good governance and partnership between all relevant territorial and socio-economic actors, in particular the social partners and non-governmental organisations. It is therefore necessary that Member States encourage the participation of social partners and non-governmental organisations in the implementation of the ESF.

- (10) The Member States and the Commission should ensure that the implementation of the priorities financed by the ESF contribute to the promotion of equality between women and men in accordance with Article 8 **TFEU**. Evaluations have shown the importance of taking the gender aspect into account in all dimensions of **operational** programmes, while ensuring that specific actions are taken to promote gender equality.
- (11) In accordance with Article 10 **TFEU**, the implementation of the priorities financed by the ESF should contribute to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The ESF should support the fulfilment of the obligation under the UN Convention on the Rights of Persons with Disabilities with regard inter alia to education, work and employment and accessibility. The ESF should also promote the transition from institutional to community-based care. **The ESF should not support any action that contributes to segregation or to social exclusion.**
- (12) Support for social innovation **helps to make** policies more responsive to social change and to encourage and support innovative social enterprises. In particular, testing and evaluating innovative solutions before scaling them up is instrumental in improving the efficiency of the policies and thus justifies specific support from the ESF.
- (12bis) Innovative solutions could include, provided they prove to be effective, development of social metrics (such as for example social labelling).**
- (13) Transnational cooperation has a significant added value and [...] **should therefore be supported by all Member States with the exception of duly justified cases taking account of the principle of proportionality.** The Commission **should support the activities of Member States in this regard through** facilitating exchanges of experience and coordinating implementation of relevant initiatives.

- (14) The mobilisation of regional and local stakeholders **will help** to deliver the Europe 2020 Strategy and its headline targets. Territorial pacts, local initiatives for employment and social inclusion, community-led local development strategies and sustainable urban development strategies may be used and supported to involve more actively regional and local authorities, cities, social partners and non-governmental organisations in the implementation of **operational** programmes.
- (15) Regulation (EU) No [...] **[CPR]** provides that rules on eligibility of expenditure are to be established at national level, with certain exceptions for which it is necessary to lay down specific provisions with regard to the ESF.
- (16) With a view to simplifying the use of the ESF and reducing the risk of errors, and with regard to the specificities of the operations supported by the ESF, it is appropriate to lay down provisions which complement Articles 57 and 58 of Regulation (EU) No [...] **[CPR]**.
- (17) The Member States and regions should be encouraged to **actively consider the option of leveraging** the ESF through financial instruments in order to support for example students, job creation, mobility of workers, social inclusion and social entrepreneurship.
- (18) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission for establishing the definition of standard scales of unit costs and lump sums and their maximum amounts according to different types of operations [...]. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(19) **The Commission will be assisted in its tasks by the ESF Committee provided for in Article 163 of the Treaty on the Functioning of the European Union. Details of the composition and role of the committee should be set out.**

(20) This Regulation replaces Regulation (EU) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999¹. That Regulation should therefore be repealed.

Nevertheless, this Regulation should not affect either the continuation or modification of assistance approved by the Commission on the basis of Regulation (EC) No 1081/2006 or any other legislation applying to that assistance on 31 December 2013, which should consequently apply thereafter to that assistance or the projects concerned until their closure. Applications to receive assistance made under Regulation (EC) No 1081/2006 should therefore remain valid.

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

¹ OJ L 210, 31.7.2006, p. 12.

C. European Regional Development Fund

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on specific provisions concerning the European Regional Development Fund and the
Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 178 and 349 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) Article 176 of the Treaty **on the Functioning of the European Union (TFEU)** provides that the European Regional Development Fund (ERDF) is intended to help to redress the main regional imbalances in the Union. **Therefore, in accordance with that Article and Article 174(2) and (3) TFEU,** the ERDF **is to** contribute to reducing [...] **disparities** between the levels of development of the various regions [...] **and the backwardness of** the least favoured regions, [...] **among which particular attention should be paid to regions which suffer from** severe and permanent natural or demographic handicaps such as [...] **the northernmost regions with very low population density and** island, **cross-border and mountain regions.**
- (2) The provisions common to the ERDF, the European Social Fund (ESF) [...] and the Cohesion Fund are set out in Regulation (EU) No [...] /2012 of [...] 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 covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006¹ [Common Provisions Regulation - CPR].
- (3) Specific provisions concerning the type of activities which may be supported by the ERDF **in order to contribute to the investment priorities within** the thematic objectives defined in Regulation (EU) No [...] /2012 [CPR] should be laid down. At the same time, expenditure outside the scope of the ERDF should be defined and clarified, including [...] **investments to achieve** the reduction of greenhouse gas emissions [...] **from the activities listed in Annex 1 to** Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [...]².

¹ OJ L , , p. .

² OJ L 275, 25.10.2003, p. 32.

In order to avoid excessive financing, these investments should not be eligible for support from the ERDF as they already benefit financially from the application of directive 2003/87/EC. This exclusion should not restrict the possibility to use the ERDF to support activities not covered by Annex I of Directive 2003/87/EC even if implemented by the same economic operators, such as energy efficiency investments in the district heating networks, smart gas and power distribution, storage and transmission systems, measures aimed at reducing air pollution etc., even if one of their indirect effects is the reduction of greenhouse gas emissions or if they are listed in the national plan referred to in Article 10c(1) of Directive 2003/87/EC.

- (4) In order to address the specific needs of the ERDF, and in line with the Europe 2020 strategy¹ that cohesion policy should support the need to deliver smart, sustainable and inclusive growth, it is necessary to set out within each thematic objective laid down in Article 9 of Regulation (EU) No [...] /2012 [CPR] the ERDF-specific actions as 'investment priorities' **which shall set out detailed objectives, which are not mutually exclusive, to which the ERDF shall contribute. These investment priorities should form the basis for the definition of specific objectives within programmes that take into account the needs and characteristics of the programme area.**

¹ COM(2010) 2020 final, 3.3.2010.

- (5) The ERDF should contribute to the Europe 2020 strategy **for smart, sustainable and inclusive growth**, thus ensuring greater concentration of ERDF support on the priorities of the Union. According to the category of regions supported, the support from the ERDF **under the investment for growth and jobs goal** should be concentrated on research and innovation, **information and communication technologies (ICT)**, small and medium-sized enterprises (**SMEs**) and **promoting a low carbon economy**. **This concentration should be attained at national level allowing for flexibility at the level of operational programmes and in different categories of regions and should be adjusted, if appropriate, to take into account of Cohesion Fund resources allocated to supporting the investment priorities referred to in Article 3(a)(i) and (iii) of Regulation (EU) No [...]/2012 [CF]**. The degree of concentration should take into account the level of development of the region, **the contribution of Cohesion Fund resources if applicable**, as well as the specific needs of regions whose GDP per capita for the 2007-13 period was less than 75% of the average GDP of the EU-25 for the reference period.

In order to maximise their contribution to the objective of supporting employment friendly growth, activities encouraging sustainable tourism, culture and natural heritage should be part of a territorial strategy for specific areas, including the conversion of declining industrial regions. Support for such activities should also contribute to strengthening innovation and the use of ICT, SMEs, environment and resource efficiency or the promotion of social inclusion.

Under the European territorial cooperation goal, the ERDF should also be able to support the sharing of human resources and facilities and all types of infrastructure across borders in all regions.

- (6) A common set of **output** indicators to assess **the aggregated** progress **at Union level** of implementation **of programmes** should be set out [...] **in this Regulation. These should correspond to the investment priority and type of action supported in accordance with this Regulation and the relevant provisions of Regulation (EU) No [....]/2012 [CPR]**. **Those** indicators should be complemented by programme-specific **result** indicators **and, where appropriate, programme-specific output indicators.**

- (7) Within the framework of sustainable urban development, it is considered necessary to support integrated actions to tackle the economic, environmental, climate and social challenges affecting urban areas [...], **including cities, peri-urban areas and deprived urban neighbourhoods, defined in accordance with the relevant national framework of each Member State.**
- (8) In order to identify or test new solutions to issues relating to sustainable urban development which are of relevance at Union level, the ERDF should support innovative actions in the field of sustainable urban development.
- (9) Building on the experience and strengths of the integration of measures in the field of sustainable urban development into operational programmes supported by the ERDF during the 2007-2013 period, a further step should be taken at Union level by establishing an urban development platform **to promote capacity building and networking and exchange of experience at Union level.**
- (10) The ERDF should address the problems of accessibility to, and remoteness from, large markets facing areas with an extremely low population density, as referred to in Protocol No 6 on special provisions for Objective 6 in the framework of the Structural Funds in Finland and Sweden to the 1994 Act of Accession. The ERDF should also address the specific difficulties encountered by certain islands, mountainous areas, border regions and sparsely populated areas whose geographical situation slows down their development, with a view to supporting their sustainable development.
- (11) Specific attention should be paid to the outermost regions, namely by extending, on an exceptional basis, the scope of the ERDF to the financing of operating aid linked to the offsetting of the additional costs resulting from their specific economic and social situation, which is compounded by the handicaps resulting from the factors referred to in Article 349 of the Treaty **on the Functioning of the European Union**, namely their remoteness, insularity, small size, difficult topography and climate and their economic dependence on a few products, the permanence and combination of which severely restrain their development. **Such specific measures require the use of Article 349 of the Treaty on the Functioning of the European Union as a legal basis.** [...].

- (12) [...]
- (13) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission **concerning procedures for the selection and implementation of innovative actions** [...]. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control, by Member States, of the Commission's exercise of implementing powers¹.
- (14) This Regulation replaces Regulation (EC) No 1080/2006 of the European Parliament and the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999². In the interests of clarity, Regulation (EC) No 1080/2006 should therefore be repealed.

Nevertheless, this Regulation should not affect either the continuation or modification of assistance approved by the Commission on the basis of Regulation (EC) No 1080/2006 or any other legislation applying to that assistance on 31 December 2013, which should consequently apply thereafter to that assistance or the projects concerned until their closure. Applications to receive assistance made under Regulation (EC) No 1080/2006 should therefore remain valid.

¹ OJ L 55, 28.2.2011, p. 13.

² OJ L 210, 31.7.2006, p. 1.

- (15) Since the economic, social and territorial cohesion objectives cannot be sufficiently achieved by the Member States by reason of the extent of the disparities between the levels of development of the various regions and the backwardness of the least favoured regions and the limit on the financial resources of the Member States and regions and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
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D. European Territorial Cooperation

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on specific provisions for the support from the European Regional Development Fund to the
European territorial cooperation goal**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 178 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹²,

Having regard to the opinion of the Committee of the Regions¹³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 176 of the Treaty **on the Functioning of the European Union (TFEU)** provides that the European Regional Development Fund (ERDF) is intended to help to redress the main regional imbalances in the Union. **Therefore**, in accordance with this article and Article 174**(3) TFEU**, the ERDF **is to** contribute to reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions, among which particular attention should be paid to regions which suffer from severe and permanent natural or demographic handicaps such as island, cross-border and mountain regions.

- (2) The provisions common to the ERDF, the European Social Fund [...] and the Cohesion Fund [...] are set out in Regulation (EU) No [...] /2012 of [...] 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 covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006¹⁴ [Common Provisions Regulation - CPR]. Specific provisions concerning the type of activities which may be financed by the ERDF under the goals defined in that Regulation (EU) No [...] /2012 of the European Parliament and of the Council **on specific provisions concerning the European Regional Development Fund [...] and the Investment for growth and jobs goal**¹ [ERDF Regulation] are set out in that Regulation. Those Regulations are not fully adapted to the specific needs of the European territorial cooperation goal, where at least two Member States or one Member State and third countries cooperate. It is therefore necessary to lay down provisions specific to the European territorial cooperation goal concerning scope and geographical coverage, financial resources, investment priorities and concentration, programming, monitoring and review, technical assistance, financial support and eligibility, management, control and **designation**, and financial management.
- (3) To increase the value added of the Union's cohesion policy, the specific provisions should lead to considerable simplification **for all those** involved: beneficiaries, programme authorities, participating Member States and third countries, as well as the Commission.
- (4) Under the European territorial cooperation goal, the ERDF **should** support cross-border, transnational and interregional cooperation.

¹ See page yy of this Official Journal.

- (5) Cross-border cooperation should aim to tackle common challenges identified jointly in the border regions (such as poor accessibility, inappropriate business environment, lack of networks among local and regional administrations, research and innovation and take-up of information and communication technologies, environmental pollution, risk prevention, negative attitudes towards neighbouring country citizens) and exploit the untapped potentials in the border area (development of cross-border research and innovation facilities and clusters, cross-border labour market integration, cooperation among universities or health centres), while enhancing the cooperation process for the purpose of the overall harmonious development of the Union. In the case of any cross-border programme between Northern Ireland and the border counties of Ireland in support of peace and reconciliation, the ERDF **should** also contribute to promoting social and economic stability in the regions concerned, notably by actions to promote cohesion between communities.
- (6) Transnational cooperation should aim to strengthen cooperation by means of actions conducive to integrated territorial development linked to the Union's cohesion policy priorities.
- (7) Interregional cooperation should aim to reinforce the effectiveness of cohesion policy by encouraging exchange of experience between regions **on thematic objectives and urban and rural development, to improve [...] implementation of [...] cooperation programmes [...] and actions as well as promoting analysis of trends in the area of territorial cohesion through studies, data collection and other measures. The exchange of experience on thematic objectives should enhance design and implementation of operational programmes under the** Investment for growth and jobs and **the European Territorial Cooperation goals, including [...] the fostering of** cooperation between innovative research-intensive clusters and exchanges between researchers and research institutions, **taking into consideration the experience of** "Regions of Knowledge" and "Research potential in Convergence and Outermost regions" under the Seventh Framework Programme for Research.

- (8) Objective criteria for designating eligible regions and areas should be fixed. To this end, the identification of eligible regions and areas at Union level should be based on the common system of classification of the regions established by Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)¹⁵.
- (9) Cross-border cooperation should support regions located on land or sea borders. Based on experience from previous programming periods, the Commission should [...] define the list of cross-border areas to receive support under cross-border cooperation programmes in a simpler way, by cooperation programme. In drawing up that list, the Commission should take into account adjustments needed to ensure coherence, in particular on land and maritime borders, and continuity of programme areas established for the 2007-2013 programming period. These adjustments may reduce or enlarge existing programme areas or the number of crossborder cooperation programmes, but may allow for geographical overlap.
- (10) Areas for transnational cooperation should be defined having regard to actions needed to promote integrated territorial development. The Commission should [...] define transnational cooperation areas.
- (11) Any interregional cooperation programme should cover the whole Union.
- (12) It is necessary to continue supporting or – where needed – to establish cross-border, transnational and interregional cooperation with the Union's neighbouring third countries, as this will benefit the regions of the Member States which border third countries. To that effect, the ERDF will contribute to the cross-border and sea basin programmes established under the European Neighbourhood Instrument (ENI) pursuant to Regulation (EU) No [...]/2012¹⁷ and the Instrument for Pre-Accession **Assistance** (IPA) pursuant to Regulation (EU) No [...]/2012.

- (13) For the benefit of the regions of the Union, a mechanism to organise support from the ERDF to external policy instruments such as ENI and IPA should be set up, including where external cooperation programmes cannot be adopted or have to be discontinued.
- (14) Apart from interventions on external borders supported by external policy instruments of the Union covering border regions inside and outside the Union, there may be cooperation programmes supported by the ERDF that cover regions both inside and **exceptionally** outside the Union where the regions outside the Union are not covered by external policy instruments, either because they are not a defined beneficiary country or because such external cooperation programmes cannot be set up. **It is necessary, however, to ensure that the financing of assistance from the ERDF for operations, implemented in the territory of third countries should serve primarily for the benefit of the regions of the Union. Within these constraints, the** Commission should [...] **be allowed**, when drawing up the lists of cross-border and transnational programme areas, to cover regions from third countries as well.
- (15) It is necessary to fix the resources allocated to each of the different components of the European territorial cooperation goal, **including each Member State share of the global amounts**, while maintaining a significant concentration on cross-border cooperation and securing sufficient funding levels for outermost regions' cooperation.
- (16) The selection of thematic objectives should be limited for **each cross-border co-operation and transnational programme** in order to maximise the impact of cohesion policy across the Union. However, the concentration under interregional cooperation should be reflected in the aim of each operation rather than in a limitation of the number of thematic objectives, in order to get the most out of interregional cooperation for the reinforcement of the effectiveness of cohesion policy under the Investment for growth and jobs and the European territorial cooperation goals.

(17) In order to deliver on the targets and objectives of smart, sustainable and inclusive growth set out in the Europe 2020 strategy **for smart sustainable and inclusive growth**, the ERDF should contribute under the European territorial cooperation goal to the thematic objectives of developing an economy based on knowledge, research and innovation, promoting a greener, more resource-efficient and competitive economy, fostering high employment that delivers social and territorial cohesion, and developing administrative capacity. **The investment priorities under the thematic objectives set out detailed objectives, which are not mutually exclusive, to which the ERDF shall contribute under the European territorial cooperation goal. These investment priorities form the basis for the definition of specific objectives within cooperation programmes that take into account the needs and characteristics of the programme area. [...]** The list of the investment priorities under the different thematic objectives should be adapted to the specific needs of the European territorial cooperation goal, in particular by allowing for the continuation under cross-border cooperation of legal and administrative cooperation and cooperation between citizens and institutions, of cooperation in the fields of employment, training and social inclusion in a cross-border perspective, by allowing for the continuation under transnational cooperation of maritime cross-border cooperation not covered by cross-border cooperation programmes, and by the development and **co-ordination** of macro-regional and sea-basin strategies, **where appropriate**.

(17bis) Within the thematic objective of promoting social inclusion and combating poverty and taking into account its practical importance, it is necessary to ensure that in the case of any cross-border programme between Northern Ireland and the border counties of Ireland in support of peace and reconciliation, the ERDF should also contribute to promote social and economic stability in the regions concerned, notably by actions to promote cohesion between communities. The specificities of the above-mentioned cross-border programme with Northern Ireland should also justify that certain rules on selection of operation in this Regulation should not apply to that cross-border programme.

(18) It is necessary to adapt the content requirements of cooperation programmes under the European territorial cooperation goal to their specific needs. Therefore they also need to cover aspects necessary for effective implementation on the territory of participating Member States, such as the bodies responsible for audit and control, the procedure to set up a joint secretariat, and the allocation of liabilities in case of financial corrections. In addition, due to the horizontal character of interregional cooperation programmes, the content of such cooperation programmes should be adapted, especially as regards the definition of the beneficiary or beneficiaries under the current INTERACT and ESPON programmes.

(18bis) **It is appropriate to involve third countries or territories already in the preparatory process of cooperation programmes, when they have accepted the invitation to participate in such programmes, for which purpose special procedures should be established in the Regulation. By way of derogation of the standard procedure, when cooperation programmes involve outermost regions and third countries, the participating Member States should consult the respective third countries before submitting the programmes to the Commission. In order to make the involvement of third countries in cooperation programmes more effective and pragmatic, the agreements to the contents of the cooperation programmes and the possible contribution of the third countries should be also made possible to be expressed in the formally approved minutes of the consultation meetings with the third countries or of the deliberations of the regional cooperation organizations.**

Concerning the approval procedure of the operational programmes, and taking into account the principles of shared management and of simplification, the Commission should approve only the core elements of the cooperation programmes, the other elements should be approved by the participating Member State or States. For the sake of legal certainty and transparency, it is necessary set out a provision requiring that in cases where the participating Member State or States amends an element of a cooperation programme, not subject to the Commission decision, that the managing authority of that Member State should notify such an amendment to the Commission within one month of the date of the decision.

- (19) Consistent with the **Union Strategy for** smart, sustainable and inclusive growth, **the European Structural and Investment Funds** should provide a more integrated and inclusive approach to tackling local problems. In order to strengthen this approach, support from the ERDF support in border regions should be coordinated with support from the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund(EMFF) and should, where appropriate, involve European groupings of territorial cooperation set up under 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)¹ where local development figures among their objectives.
- (20) Based on the experience from the 2007-13 programming period, the conditions for the selection of operations should be clarified and strengthened in order to ensure selection of only genuinely joint operations. **Due to specificities of cooperation programmes between outermost regions and third countries or territories it is necessary to establish lightened cooperation conditions in terms of processing operations under those programmes.** The notion of sole beneficiaries should be defined and it should be clarified that they are permitted to carry out cooperation operations by themselves.
- (21) The responsibilities of lead beneficiaries, retaining overall responsibility for the implementation of an operation, should be specified.
- (22) The requirements for implementation reports should be adapted to the cooperation context and reflect the programme implementation cycle. In the interests of sound management, annual review meetings may be carried out in writing.
- (23) A common set of **output** indicators to assess progress of programme implementation adapted to the specific character of cooperation programmes should be set out before the Member States draft their cooperation programmes. **Those** indicators should be complemented by programme-specific **result** indicators **and, where relevant, by programme specific output indicators.**

¹ OJ L 210, 31.7.2006, p. 19.

- (24) Due to the involvement of more than one Member State and the resulting higher administrative costs, in particular in respect of controls and translation, the ceiling for technical assistance expenditure should be higher than under the Investment for growth and jobs goal. In addition, cooperation programmes with limited ERDF support should receive a certain minimum amount **for technical assistance which may be greater than 6%**, to ensure sufficient funding for effective technical assistance activities.
- (25) Due to the involvement of more than one Member State, the general rule laid down in the Regulation (EU) No [...] /2012 [CPR] that each Member State adopts its national eligibility rules is not appropriate for the European territorial cooperation goal. Based on experience from the 2007-13 programming period, a clear hierarchy of eligibility rules should be established with a strong move towards joint eligibility rules. **In particular, the Commission should, based on experience from the 2007-2013 programming period, be empowered to adopt sufficient joint eligibility rules, on certain cost categories laid down in this Regulation.**
- (26) Due to the frequent involvement of staff from more than one Member State in the implementation of operations, and given the number of operations for which staff costs is a significant element, a flat-rate for costs covering staff should be applied to the other direct costs of cooperation operations, thus avoiding individual accounting for the management of such operations.
- (27) The rules on flexibility concerning the location of operations outside the programme area should be simplified. In addition, it is necessary to support effective cross-border, transnational and interregional cooperation with the Union's neighbouring third countries where this is necessary to ensure that the regions of the Member States which border third countries can be effectively assisted in their development. Accordingly, it is appropriate to authorise on an exceptional basis and under certain conditions the financing of assistance from the ERDF for operations located on the territory of **neighbouring** third countries where the operations are for the benefit of the regions of the Union.

- (28) Member States should be encouraged to confer the task of the managing authority on an EGTC or to make such a grouping responsible for managing the part of a cooperation programme covering the territory concerned by **that** EGTC.
- (29) The managing authority should set up a joint secretariat which should provide information to applicants for support, deal with project applications and assist beneficiaries in implementing their operations.
- (30) Managing authorities should be responsible for all functions of the managing authority listed in Article 114 of Regulation (EU) No [...] /2012 [CPR], including for management verifications in order to ensure uniform standards across the whole programme area. However, where an EGTC is designated as managing authority, it should be authorised to carry out such verifications, as all participating Member States are represented in its organs. Even where no EGTC is designated, the managing authority should be authorised by the participating Member States to carry out verifications on the whole programme area.

(30bis) Certifying Authorities should be responsible for all functions of the certifying authority listed in Article 115 of Regulation (EU) No [...] /2012 [CPR]. The Member State may designate the Managing Authority to carry out the functions of the Certifying Authority.

- (31) A single audit authority should be responsible for carrying out all functions listed in Article 116 of Regulation (EU) No [...] /2012 [CPR] in order to ensure uniform standards across the whole programme area. Where this is not possible, a group of auditors should be able to assist the programme audit authority.

(31bis) In order to strengthen the Union's economic, social and territorial cohesion and to reinforce effectiveness of its cohesion policy, third countries are allowed to participate through contribution of IPA and ENI resources in cross-border transnational and interregional cooperation programmes. Operations, co-financed under such programmes should, however, continue pursuing cohesion policy objectives, even if they are implemented, partly or in their entirety, outside the territory of the Union. In this context contribution to the objectives of the Union's external action remains merely incidental, as the centre of gravity of cooperation programmes should be determined by thematic objectives and investment priorities of the cohesion policy. In order to ensure effective participation of third countries in cooperation programmes, managed in accordance with shared management principle, programme implementation conditions should be set out in the cooperation programmes themselves and also, where necessary, in financing agreements, concluded between the Commission, the Governments of each of the third country and the Member State hosting the managing authority of the relevant cooperation programme. The programme implementation conditions should be consistent with the provisions of applicable Union law and those of the national law of the participating Member States relating to its application.

- (32) A clear chain of financial liability in respect of recovery for irregularities should be established, from beneficiaries to lead beneficiary to the managing authority to the Commission. Provision should be made for liability of Member States where no recovery can be obtained.
- (33) Based on the experience from the 2007-2013 programming period, an explicit derogation should be established for the conversion of expenditure incurred in a currency other than the euro, by applying the **monthly** conversion rate at a date as close to the point in time of the expenditure as possible **or in the month in which the expenditure was submitted for verification.** Financing plans, reports and accounts concerning joint cooperation operations should in any event only be submitted in euro to the joint secretariat, the programme authorities and the monitoring committee. The correctness of conversion should be verified.

- (34) Having regard to the difficulties and delays experienced in setting up genuinely joint programme structures, the timeframe for justifying payments in respect of budget commitments under the European territorial cooperation goal should be three years following the year of the budget commitment.
- (35) It is necessary to clarify the applicable rules concerning financial management, programming, monitoring, evaluation and control regarding the participation of third countries in **cross-border**, transnational and interregional cooperation programmes. [...]

(35bis) In order to strengthen the better co-ordination of ERDF financing for cooperation programmes, adopted under this Regulation, involving the outermost regions with possible complementary financing from the European Development Fund (EDF), ENI, IPA, and with the European Investment Bank (EIB), Member States and third countries or territories participating in such cooperation programmes should set out coordination mechanisms in accordance with those cooperation programmes.

- (36) In order to set out specific [...] rules **for eligibility of expenditure**, the power to adopt acts in accordance with Article 290 **TFEU** should be delegated to the Commission in respect of the content and scope set out in Article 17. **In order to ensure a coherent legal framework on the rules for eligibility, it is necessary to lay down provision on that the Commission should notify any delegated act, adopted in accordance with article 29, simultaneously to the European Parliament and to the Council within four months of the adoption of the Regulation.** It is **also** of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and **to the** Council.

- (37) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the lists of cross-border areas and of transnational areas, of the submission of draft cooperation programmes, the nomenclature concerning categories of intervention and of implementation reports. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control, by Member States, of the Commission's exercise of implementing powers.
- (38) **Nevertheless, this Regulation should not affect either the continuation or modification of assistance approved by the Commission on the basis of Regulation (EC) No 1080/2006 or any other legislation applying to that assistance on 31 December 2013, which should consequently apply thereafter to that assistance or the projects concerned until their closure. Applications to receive assistance made under Regulation (EC) No 1080/2006 should therefore remain valid.**
- (39) **Since the economic, social and territorial cohesion objectives cannot be sufficiently achieved by the Member States by reason of the extent of the disparities between the levels of development of the various regions and the backwardness of the least favoured regions and the limit on the financial resources of the Member States and regions and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.**
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E. Cohesion Fund

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular the second subparagraph of Article 177 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 174 of the Treaty on the Functioning of the European Union (**TFEU**) provides that the Union **is to** develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. The Cohesion Fund should therefore provide a financial contribution to projects in the field of the environment and to trans-European networks in the area of transport infrastructure.

¹ OJ C , , p. .

² OJ C , , p. .

- (2) **The provisions common to the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund are set out in** Regulation (EU) No [...] /2012 of [...] 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 covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006¹ [Common Provisions Regulation - CPR]. **That Regulation [CPR] establishes a new framework for the action of the European Structural and Investment Funds including** the Cohesion Fund. It is necessary to specify the objectives of the Cohesion Fund in relation to the new framework for its action and in relation to the purpose assigned to it in the Treaty **on the Functioning of the European Union.**
- (3) The Union may, through the Cohesion Fund, contribute to actions in pursuit of the Union's environmental objectives specified in Articles 11 and 191(1) of **TFEU, including the development of environment friendly and low carbon transport systems outside the trans-European networks, namely river and sea transport, including ports, intermodal transport systems, and their interoperability, management of road, sea and air traffic, clean urban transport and public transport.**
- (4) Trans-European transport network projects financed by the Cohesion Fund **should** comply with the guidelines adopted by Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network². In order to concentrate efforts, priority should be given to projects of common interest as defined in that Decision.
- (5) Specific provisions concerning the type of activities which may be supported by the Cohesion Fund under the thematic objectives defined in Regulation (EU) No [...] /2012 [CPR] should be laid down. [...]

¹ OJ L , , p. .

² OJ L 204, 5.8.2010, p. 1.

(5bis) In order to avoid excessive financing, investments to achieve [...] the reduction of greenhouse gas emissions from the activities listed in Annex I to [...] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC¹ should not be eligible for support from the Cohesion Fund as they already benefit financially from the application of that Directive. This exclusion should not restrict the possibility to use the Cohesion Fund to support the activities not listed in Annex I to Directive 2003/87/EC even if implemented by the same economic operators, such as, energy efficiency investments in the district heating networks, smart gas and power distribution, storage and transmission systems, measures aimed at reducing air pollution etc, even if one of their indirect effects is the reduction of greenhouse gas emissions or if they are listed in the national plan referred to in Article 10c(1) of Directive 2003/87/EC.

(5ter) It should be clarified that investments in housing except for promoting energy efficiency and renewable energy use cannot be eligible for support from the Cohesion Fund as they do not bring clear environmental benefits and therefore do not contribute to the objectives of the Cohesion Fund as defined in the Treaty on the Functioning of the European Union. However, promoting energy efficiency and renewable energy in the housing sector does bring about clear environmental benefits and should therefore be eligible for support from the Cohesion Fund.

¹ OJ L 275, 25.10.2003, p. 32.

- (6) In order to address the specific needs of the Cohesion Fund, and in line with the Europe 2020 strategy¹ that cohesion policy should support the need to deliver smart, sustainable and inclusive growth, it is necessary to set out investment priorities within the scope of the thematic objectives laid down in Regulation (EU) No [...] /2012 [CPR]. **These investment priorities shall set out detailed objectives, which are not mutually exclusive, to which the Cohesion Fund shall contribute. These investment priorities should form the basis for the definition of specific objectives within programmes that take into account the needs and characteristics of the programme area. In order to increase flexibility and reduce administrative burden by allowing joint implementation with the corresponding ERDF priorities, the content of the list of investment priorities should be aligned with the corresponding thematic objectives eligible under ERDF.**
- (7) A common set of **output** [...] indicators to assess **the aggregated** progress **at Union level** of implementation of programmes should be set out **in this Regulation** [...]. **These should correspond to the investment priority and type of action supported in accordance with this Regulation and the relevant provisions of Regulation (EU) No [...] /2012 [CPR].** These indicators should be complemented by programme-specific **result** indicators and, **where relevant, by programme-specific output indicators.**
- (8) This Regulation replaces Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing the Cohesion Fund [...]². In the interest of clarity, Regulation (EC) No 1084/2006 should therefore be repealed.

Nevertheless, this Regulation should not affect either the continuation or modification of assistance approved by the Commission on the basis of Regulation (EC) No 1084/2006 or any other legislation applying to that assistance on 31 December 2013, which should consequently apply thereafter to that assistance or the projects concerned until their closure. Applications to receive assistance made under Regulation (EC) No 1084/2006 should therefore remain valid.

¹ COM(2010) 2020 final, 3.3.2010.

² OJ L 210, 31.7.2006, p. 79.

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