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Subject:	Cohesion Policy Legislative Package
	- Explanatory note: Ex ante conditionalities - suspension of payments

Delegations will find attached an explanatory note of the Commission services on "Ex ante conditionalities - Suspension of payments at the stage of adoption of programmes".

Explanatory Note of the Commission Services: Ex-ante conditionalities

Suspension of payments at the stage of adoption of programmes

1. INTRODUCTION

The purpose of this note is to outline the Commission services' understanding of the provisions set out in Article 17 of the CPR in the Presidency compromise of 16 April 2012 concerning the steps that are taken by the Member State and the Commission regarding the assessment of the applicability and fulfilment of ex-ante conditionalities and the circumstances in which a decision to suspend payments for a relevant priority of a programme could be taken when a programme is adopted.

The ex-ante conditionalities set out in annex 4 of the Common Provisions Regulation reflect existing commitments that should, in all events, be met by the end of 2013 at the latest, and in general earlier. The corresponding criteria for ex-ante conditionalities are directly linked to ensuring the effective and efficient implementation of the five CSF funds.

The purpose of a suspension is **not** to sanction a Member State for non-fulfilment of an ex-ante conditionality. A suspension is limited to situations where the absence of fulfilment of an ex-ante conditionality would lead to a significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the investment and Union priority or priorities concerned.¹

¹ In the case of the EMFF the specific ex-ante conditionalities for data collection and control would apply to the programme as a whole.

2. ASSESSMENT PROCESS

Step 1: Assessment by the Member State

The Member State shall:

- Establish specific objectives in its programmes. A specific objective is defined as the result to which an investment priority or Union priority shall contribute in a specific or national context through actions or measures undertaken within a priority of a programme;
- Assess the applicability of the thematic and general ex-ante conditionalities laid down in the fund-specific rules to each of the specific objectives for an investment priority or a Union priority;
- Assess whether the criteria associated with the applicable ex-ante conditionalities as set out in the fund-specific rules are fulfilled;
- Indicate in its partnership agreement or programmes the applicable ex-ante conditionalities for which the criteria have not been fulfilled, together with the priorities affected, the actions to be taken, the responsible bodies and the timetable to ensure that they shall be fulfilled at the latest by the end of 2016.

Step 2: Assessment by the Commission

The Commission shall assess the consistency and the adequacy of the information provided by the Member State on:

- The applicability of ex-ante conditionalities to the specific objectives pursued within the priorities in each programme;
- The fulfilment of applicable ex-ante conditionalities based on the criteria laid down in the fund-specific rules respecting national and regional competences to decide on the specific and adequate policy measures including the content of strategies.

If the Commission disagrees with the Member State on the applicability or the fulfilment of an-ex-ante conditionality, the burden of proof shall be on the Commission.

Step 3: Examination by the Commission of grounds for prejudice

Where not all the criteria associated with applicable ex-ante conditionalities have been fulfilled at the date of transmission of the partnership agreement, the Commission shall examine, based on the information provided by the Member States and on its own assessment, whether **the non-fulfilment would give rise to a significant prejudice to the effectiveness and the efficiency of the achievement of the specific objective concerned**. For this the Commission will consider:

- The degree of non-fulfilment of the ex-ante conditionality concerned; i.e. whether one or more of the criteria for the ex-ante conditionality had not been respected to a substantial degree.
- The level of risk that, through the non-respect of the criterion or criteria concerned, there will be a negative impact on the achievement of the specific objective of the priority or priorities concerned.

As a general rule, the Commission would seek to suspend all or part of interim payments to a priority in the affected parts of the programme only where there is a substantial non-fulfilment of one or more of the criteria with a high risk of a negative impact. The Commission would have to set out the grounds and justification for suspension as part of the suspensive clauses within the decision adopting the programme.

Step 4: Suspension of interim payments

The amount suspended shall be proportionate to the prejudice taking into account the elements above, the nature of the actions to be taken to ensure fulfilment, and the funds at risk. The Member State will be informed of the Commission's intention to suspend and will have the possibility to present its observations.

Step 5: Lifting of suspension of interim payments.

The Commission shall without delay lift the suspension where a Member State has demonstrated that it has completed the actions necessary to fulfil the respective ex-ante conditionality.

3. UPSTREAM ACTION

It is the Commission services' intention to work with Member States during the phase of preparation of the partnership agreement and programmes in the identification of the applicable ex-ante conditionalities and determination of the degree of fulfilment. The objective will be to have a shared view on the gaps in the fulfilment of applicable ex-ante conditionalities prior to the formal transmission of programming documents. In this way, the Member States will have the opportunity to take the measures necessary, including making use of technical assistance, to reduce the risk of suspensions when programmes are adopted.
