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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 3 March 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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No. Cion doc.: C(2014) 1207 final

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 3.3.2014  
supplementing Regulation (EU) No 1303/2013 of the European Parliament  
and of the Council laying down common provisions on the European  
Regional Development Fund, the European Social Fund, the Cohesion  
Fund, the European Agricultural Fund for Rural Development and the  
European Maritime and Fisheries Fund and laying down general provisions  
on the European Regional Development Fund, the European Social Fund,  
the Cohesion Fund and the European Maritime and Fisheries Fund

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Delegations will find attached document C(2014) 1207 final.

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Encl.: C(2014) 1207 final



Brussels, 3.3.2014  
C(2014) 1207 final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 3.3.2014**

**supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

The key aims for the ESI Funds for 2014-2020 are to make them more result-oriented, to reinforce assurance and to simplify day-to-day management through simpler and clearer rules. In certain cases this requires detailed rules in the form of delegated acts supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>1</sup> and the Fund-specific Regulations<sup>2</sup>.

One of the main features of the legislation for 2014-2020 is the introduction of a performance framework with milestones for programmes to be achieved by 2018 and targets to be achieved by 2023. The performance framework will be linked to disbursement of the performance reserve for priorities that have achieved their milestones in 2018. Where there is a serious failure to meet targets at the end of the programming period, the Commission may apply financial corrections. The detailed rules on criteria for determining the financial corrections should ensure that they are effective and proportionate.

The current legislative framework has not always met the specific needs of financial instruments. The new framework puts considerably more emphasis on financial instruments and envisages a specific set of rules for them, some of which should be set out in delegated acts.

The treatment of revenue-generating operations is a key element of efficient and effective management of the ESI Funds. These rules apply to operations above EUR 1 million, i.e. large operations which represent a considerable share of the allocation from the ESI Funds. Regulation (EU) No 1303/2013 has greatly simplified this area by allowing applying sector-specific flat-rate revenue percentages to operations without calculating the discounted net revenue in every case. Nevertheless, Regulation (EU) No 1303/2013 still allows a full financial analysis as an option and requires it for sectors where there are no flat-rate alternatives. In that case, there is a common methodological approach to calculating the discounted net revenue.

Regulation (EU) No 1303/2013 also offers the option of using simplified costs — flat rates, standardised scales of unit costs and lumps sums — such as those used for similar beneficiaries and operations in other Union policies. Where other Union policies already recognise such costs, and they can in principle be extended to similar operations and beneficiaries under the ESI Funds, this should be done. In the particular case of a flat rate for indirect costs, a delegated act is planned to set out the flat rates to be used. The beneficiaries

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<sup>1</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>2</sup> Regulation (EU) No 1299/2013 (OJ L 347, 20.12.2013, p. 259), Regulation (EU) No 1300/2013 (OJ L 347, 20.12.2013, p. 281), Regulation (EU) No 1301/2013 (OJ L 347, 20.12.2013, p. 289), Regulation (EU) No 1304/2013 (OJ L 347, 20.12.2013, p. 470), Regulation (EU) No 1305/2013 (OJ L 347, 20.12.2013, p. 487) and a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014 – 2020 (the 'EMFF Regulation').

of the ESI Funds overlap considerably with those of Horizon 2020 and potentially with those of the LIFE programme. Detailed rules on how to apply flat rates for indirect costs used under those policies within operations supported by the ESI Funds are needed. This will not affect the rules applied to operations under other Union policies, but will extend their application to the ESI Funds in clearly defined cases.

Major projects supported under the ERDF and the Cohesion Fund are of strategic importance for the implementation of cohesion policy. To ensure high quality where major projects are subject to an independent quality review and are notified to the Commission, Regulation (EU) No 1303/2013 empowers the Commission to set out a methodology for the independent quality review. This should ensure that all bodies carrying out the review use the same approach.

To ensure reliable management and control arrangements that provide consistent data for the purposes of monitoring, evaluation, financial management, verifications and audits, managing authorities need computerised systems. Detailed rules on the list of data to be included in these systems take into account the reporting requirements and management needs. Detailed 'audit trail' rules ensure that sufficient records are maintained not only for management and supervision but for audit.

As regards assurance, the Commission should be able to rely on the work of national audit authorities as far as possible. Supplementary detailed rules on audit should ensure that all the audit authorities across the Union perform their work on the same bases for this purpose.

While the aim is to set up robust management and control systems and so prevent irregularities and fraud, Regulation (EU) No 1303/2013 also provides for financial corrections to be made. Criteria for determining that there is a serious deficiency in the functioning of management and control systems, for deciding on the level of financial correction and for applying flat rates or extrapolated financial corrections are set out to ensure this provision is applied in an effective, consistent and proportionate way.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Consultations have been carried out in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

All parts of the act have been discussed at expert group meetings involving experts from all Member States. The European Parliament was duly notified of the dates of the meetings, agendas and relevant documents to enable requests to attend the meetings. The meetings discussed all parts of the act at least once, most of them two or three times, and some parts four times, depending on the issues raised by experts, the complexity of the subject and the extent of changes needed as a result of Trilogue negotiations on the basic acts.

The expert group meetings were held in 2013 and 2014 as follows:

- The criteria for the level of financial corrections linked to the performance framework: 5 meetings (16 July, 30 October, 6 November, 12 December 2013 and 6 February 2014).

- The rules on financial instruments: 6 meetings (17 June, 23 July, 26 September, 6 November, 12 December 2013 and 6 February 2014).
- The rules on revenue-generating operations (the methodology for calculating discounted revenue): 4 meetings (25 June and 26 September, 12 December 2013 and 6 February 2014).
- The rules on the use of flat rates for indirect costs used by other EU policies: 3 meeting (24 October, 12 December 2013 and 6 February 2014).
- The methodology for the quality review of major projects: 4 meetings (26 September 25 October, 12 December 2013 and 6 February 2014).
- The list of data to be maintained by managing authorities in computerised form: 4 meetings (4 and 30 October, 12 December 2013 and 6 February 2014).
- The rules concerning arrangements for the audit trail and the use of data collected during audits carried out by the Commission: 5 meetings (16 July, 4 October and 30 October, 17 December 2013 and 6 February 2014).
- The rules on audit work: 5 meetings (16 July, 4 October, 30 October, 17 December 2013 and 6 February 2014).
- The criteria for financial corrections: 4 meetings (16 July, 30 October, 17 December 2013 and 6 February 2014).

The meetings allowed for a full presentation of the Commission's draft provisions and a thorough exchange of views on all aspects of the draft. The procedure consisted of clarifying the Commission's approach, hearing experts' views and further refining the draft text accordingly. This allowed rules to be clarified and specified in response to experts' comments. In all cases, the experts were also able to submit written comments following the meeting, and used this option extensively. The questions and comments informed the drafting of the rules concerned and were addressed at a subsequent meeting.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Regulation (EU) No 1303/2013 empowers the Commission to adopt delegated acts as regards the following:

- to establish detailed rules on criteria for determining the level of financial correction to be applied for the purposes of the performance framework (Article 22(7));
- laying down additional specific rules on purchasing land and on combining technical support with financial instruments (Article 37(13));
- laying down additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that may be delivered through financial instruments (Article 38(4));
- on the management and control of financial instruments referred to in Article 38(1)(b), including controls to be performed by managing and audit authorities,

arrangements for keeping supporting documents, elements to be evidenced by supporting documents, and management and control and audit arrangements (Article 40(4));

- setting out the rules for the withdrawal of payments to financial instruments and consequent adjustments to applications for payment (Article 41(3));
- laying down the specific rules for setting up a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies (Article 42(1));
- specific rules setting out the criteria for determining management costs and fees on the basis of performance and the applicable thresholds for and rules on reimbursing capitalised management costs and fees for equity-based instruments and micro-credit (Article 42(6));
- laying down the method for the calculation of discounted net revenue referred to in Article 61(3)(b) (Article 61(3));
- concerning the setting of the flat rate and related methods referred to in Article 68(1)(c) (Article 68(1));
- laying down the methodology to be used for the quality review of major projects (Article 101);
- laying down requirements for the data to be recorded and stored in computerised form in the monitoring system set up under point of Article 125(2)(d) (Article 125(8));
- laying down the detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and supporting documents to be held by the certifying authority, managing authority, intermediate bodies and beneficiaries (Article 125(9));
- to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in Article 127(1) (Article 127(7));
- laying down detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives (Article 127(8));
- laying down detailed rules concerning the criteria for determining whether there are serious deficiencies in the functioning of management and control systems, and what kind of deficiencies, criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections (Article 144(6)).

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 3.3.2014**

**supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006<sup>3</sup>, and in particular Articles 22(7), 37(13), 38(4), 40(4), 41(3), 42(1), 42(6), 61(3), 68(1), 101, 125(8), 125(9), 127(7), 127(8) and 144(6) thereof,

Whereas:

- (1) Regulation (EU) No 1303/2013, in Part Two, lays down common provisions applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which now operate under a common framework (the 'European Structural and Investment Funds' or 'ESI Funds'). In addition, Part Three of that Regulation contains general provisions that apply to the ERDF, the ESF and the Cohesion Fund, but do not apply to the EAFRD and the EMFF, and Part Four of that Regulation contains general provisions which apply to the ERDF, the ESF, the Cohesion Fund and the EMFF, but do not apply to the EAFRD. This Regulation therefore lays down provisions which are applicable to all ESI Funds, as well as provisions applicable only to the ERDF and the Cohesion Fund or to the ERDF, the ESF, the Cohesion Fund and the EMFF.
- (2) It is necessary to establish detailed rules on criteria for determining the level of financial correction which the Commission may apply under the performance framework for each priority included in the programmes supported by the ESI Funds.

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<sup>3</sup> OJ L 347, 20.12.2013, p. 320.

- (3) Such financial corrections may be applied only if several conditions are jointly met. The level of financial correction should be set on the basis of flat rates related to a coefficient, calculated with reference to the level of physical completion and financial absorption. External factors contributing to a serious failure to achieve targets set under the performance framework by 2023, other than factors excluding the financial correction, should be considered on a case-by-case basis and could be grounds for a lower rate of correction than would otherwise apply on the basis of the coefficient.
- (4) In the provisions on criteria for determining the level of financial corrections to be applied under the performance framework, a special allocation for the Youth Employment Initiative should be treated separately.
- (5) Specific rules should clarify the provisions on the purchase of land with support provided by financial instruments.
- (6) A coherent framework for combining grants for technical support and a financial instrument in a single operation requires that this is only allowed for the purpose of technical preparation of the prospective investment for the benefit of the final recipient.
- (7) To ensure that implementation of financial instruments is entrusted to bodies which have appropriate capacity to implement them in line with the objectives and priorities of the ESI Funds and in the most efficient manner, the criteria for selecting such bodies should be set out together with their role, liability and responsibilities.
- (8) To ensure sound financial management of financial instruments providing guarantees, the contributions from programmes should be based on a prudent ex ante risk assessment, taking into account an appropriate multiplier ratio.
- (9) To ensure that financial instruments are implemented in compliance with applicable law, specific provisions should be made for their management and control, including audit.
- (10) To ensure sound financial management of programme contributions to financial instruments, any withdrawal of such contributions should be appropriately reflected in the relevant payment applications.
- (11) To ensure consistent calculation of eligible capitalised interest rate subsidies and guarantee fee subsidies, specific rules for their calculation should be set out.
- (12) To promote rapid and efficient deployment of funds to the real economy and sound financial management, while assuring reasonable remuneration for bodies implementing financial instruments, criteria for determining management costs and fees on the basis of performance, applicable thresholds, and rules on reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit should be set out.
- (13) In line with the principle of sound financial management, revenues generated by operations should be taken into account when the public contribution is calculated.



- (14) It is necessary to determine the method for calculating an operation's discounted net revenue, taking into account the reference periods applicable to the sector of that operation, the profitability normally expected of the type of investment concerned, the application of the polluter pays principle and, if appropriate, considerations of equity linked to the relative prosperity of the Member State or region concerned.
- (15) The reference periods applicable to sectors based on historical data recorded and stored for revenue-generating projects of the 2007-2013 programming period should be set out.
- (16) It is necessary to define the costs and revenues to be taken into account in the calculation of the discounted net revenues as well as the conditions for the determination of a residual value and the financial discount rate.
- (17) The 4% discount rate proposed as an indicative benchmark should be based on the current long-term rate of return from an international portfolio of investments calculated as a mean return of 3% from the assets adjusted upwards by 1%, which is the percentage by which the average long-term government bond yield in the Union area has fallen since the financial discount rate for the 2007-2013 programming period was set.
- (18) The polluter-pays principle requires that the environmental costs of pollution and prevention be borne by those who cause pollution and that charging systems reflect the full costs, including capital costs, of environmental services, the environmental costs of pollution and of the preventive measures implemented and the costs linked to the scarcity of the resources used.
- (19) To reduce administrative burdens, beneficiaries should be allowed to use existing methods and corresponding rates set out under other Union policies in order to calculate indirect costs, if the operations and beneficiaries are of a similar type.
- (20) To ensure that operations supported under the ESI Funds which might use a flat rate for indirect costs set under other Union policies are similar to operations financed under those other policies, it is necessary to define the intervention categories and investment priorities or measures under which they fall.
- (21) The methodology to be used for carrying out the quality review of major projects should be established. The quality review by independent experts is a prerequisite for submission of a major project to the Commission by a Member State using the notification procedure provided for in Regulation (EU) No 1303/2013.
- (22) If a Member State chooses to use the notification procedure, it should decide whether the major project is to be assessed by independent experts supported by technical assistance of the Commission or, in agreement with the Commission, by other independent experts.
- (23) The capacity, competence and impartiality of independent experts carrying out the quality review of major projects are among the main factors determining whether the outcome of the review is of good quality and reliable. Therefore, certain requirements should be set out for independent experts to ensure that their work on the quality review is reliable and of high quality. All independent experts should meet these

requirements, regardless if their work is supported by technical assistance at the initiative of the Commission or by a Member State. It should be the responsibility of the Member State to verify that the independent experts meet the requirements before seeking the Commission's agreement with a selection of independent experts.

- (24) Since only major projects that have been appraised positively by the independent experts can be selected for submission to the Commission using the notification procedure, it is necessary to set out clear criteria for this purpose. It is also necessary to set out the steps of this review process and the parameters for the appraisal of quality to be used in the review, in order to ensure that the quality review of each major project is based on the same methodological approach and that the quality review is carried out in a manner which contributes to improving the quality of the major projects reviewed.
- (25) Regulation (EU) No 1303/2013 requires the managing authority to establish a system to record and store, in computerised form, data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants. It is therefore necessary to set out a list of data to be recorded and stored in that system.
- (26) Certain data is relevant for particular types of operations or for some of the ESI Funds only; the applicability of data requirements should therefore be specified. Regulation (EU) No 1303/2013 and Regulation (EU) No 1304/2013 of the European Parliament and of the Council<sup>4</sup> set out specific requirements for the recording and storage of data on individual participants in operations supported by the ESF, which need to be taken into account.
- (27) The list of data should take into account the reporting requirements set out under Regulation (EU) No 1303/2013 and the Fund-specific Regulations in order to ensure that the data necessary for financial management and monitoring, including data needed to prepare payment applications, accounts and implementation reports exists for every operation in a form in which it can be easily aggregated and reconciled. The list should take into account that certain basic data on operations in computerised form is necessary for effective financial management of operations and to fulfil the requirement to publish basic information on operations. Certain other data is necessary to effectively plan and carry out verifications and audit work.
- (28) The list of data to be recorded and stored should not prejudice the technical characteristics or structure of the computerised systems set up by managing authorities or pre-determine the format of the data recorded and stored, unless these are specifically stated in this Regulation. Nor should it prejudice the means by which data is entered or generated within the system; in some cases, the data included in the list may require the entry of multiple values. Nevertheless, it is necessary to set out certain rules on the nature of this data, to ensure that the managing authority can fulfil its responsibility for monitoring, evaluation, financial management, verification and audit, including where this requires processing of data on individual participants.

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<sup>4</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470).

- (29) In order to ensure that expenditure under operational programmes can be checked and audited, it is necessary to set out the criteria with which an audit trail should comply to be considered adequate.
- (30) It is necessary to provide, in relation to the audit work pursuant to Regulation (EU) No 1303/2013, that the Commission and the Member States should prevent any unauthorised disclosure of or access to personal data, and to specify the purposes for which the Commission and the Member States can process such data.
- (31) The audit authority is responsible for audits of operations. To ensure that the scope and effectiveness of such audits are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.
- (32) It is necessary to set out in detail the sampling basis for operations to be audited, which the audit authority should observe in establishing or approving the sampling method, including the determination of the sampling unit, certain technical criteria to be used for the sample and where necessary factors to be taken into account in taking additional samples.
- (33) The audit authority should draw up an audit opinion covering the accounts referred to in Regulation (EU) No 1303/2013. To ensure that the scope and the content of audits on accounts are adequate and that they are carried out to the same standards in all Member States, it is necessary to set out the conditions that they should meet.
- (34) To ensure legal certainty and equal treatment of all Member States in making financial corrections, consistent with the principle of proportionality, it is necessary to set out the criteria for determining serious deficiencies in the effective functioning of management and control systems, define the main types of such deficiencies and set out the criteria for establishing the level of financial correction to be applied and criteria for applying extrapolated or flat rates financial corrections.
- (35) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

## **Chapter I**

### **General provisions**

#### *Article 1*

#### **Subject matter**

This Regulation lays down the following provisions supplementing Regulation (EU) No 1303/2013:

- (a) provisions supplementing Part Two of that Regulation applicable to the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF (hereinafter referred to as the 'ESI Funds') as regards the following:
- (i) criteria for determining the level of financial correction to be applied under the performance framework;
  - (ii) rules in relation to financial instruments as regards the following:
    - additional specific rules on the purchase of land and on combining technical support with financial instruments,
    - additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that may be delivered through financial instruments,
    - rules concerning the management and control of certain financial instruments, including controls to be performed by managing and audit authorities, arrangements for keeping supporting documents, elements to be evidenced by supporting documents, and management and control and audit arrangements,
    - rules for withdrawal of payments made to financial instruments and consequent adjustments in respect of applications for payment,
    - specific rules concerning the establishment of a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies,
    - specific rules setting out the criteria for determining management costs and fees on the basis of performance and the applicable thresholds, as well as rules for the reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit;
  - (iii) the method for calculating the discounted net revenue of operations generating net revenue after completion;
  - (iv) the flat rate for indirect costs and the related methods applicable in other Union policies;
- (b) provisions supplementing Part Three of that Regulation applicable to the ERDF and the Cohesion Fund as regards the methodology to be used in carrying out the quality review of major projects;
- (c) provisions supplementing Part Four of that Regulation applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF as regards the following:
- (i) rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established by the managing authority;

- (ii) detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries;
- (iii) the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations;
- (iv) detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives;
- (v) detailed rules concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial corrections.

## **Chapter II**

### **Provisions supplementing Part Two of Regulation (EU) No 1303/2013 applicable to the ESI Funds**

#### **SECTION I**

##### **CRITERIA FOR DETERMINING THE LEVEL OF FINANCIAL CORRECTION TO BE APPLIED UNDER THE PERFORMANCE FRAMEWORK**

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

##### *Article 2*

##### **Determination of the level of financial correction**

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

1. The level of financial correction to be applied by the Commission pursuant to Article 22(7) of Regulation (EU) No 1303/2013 shall be a flat rate determined on the basis of the ratio between the average of the final achievement rates for all output indicators and key implementation steps under a performance framework and the final achievement rate of the financial indicator under that performance framework (the 'achievement/absorption coefficient').
2. The achievement/absorption coefficient shall be calculated in the following way:

- (a) the final value achieved for each output indicator and key implementation step selected for the performance framework under a given priority shall be divided by the respective target values in order to obtain their final achievement rate expressed as a percentage of the target;
  - (b) the average of the final achievement rates for all the output indicators and key implementation steps selected for the performance framework under a given priority shall be determined. For that purpose, where a final achievement rate is calculated to be in excess of 100 %, it shall count as 100 %;
  - (c) the final value achieved for the financial indicator selected for the performance framework under a given priority shall be divided by the respective target value in order to obtain its final achievement rate expressed as a percentage of the target. For that purpose, where a final achievement rate is calculated to be in excess of 100 %, it shall count as 100 %;
  - (d) the average of the final achievement rates for all the output indicators and key implementation steps selected for the performance framework under a given priority shall be divided by the final achievement rate for the financial indicator selected for the performance framework under a given priority.
3. If a priority relates to more than one ESI Fund or category of region, the achievement/absorption coefficient shall be calculated separately for each ESI Fund and/or category of region.

### *Article 3*

#### **Level of financial correction**

(Fourth subparagraph of Article 22(7) of Regulation (EU) No 1303/2013)

1. The level of financial correction is fixed as follows:
  - (a) for an achievement/absorption coefficient below 65 % but not less than 60 %, a flat rate of 5 % shall be applied;
  - (b) for an achievement/absorption coefficient below 60 % but not less than 50 %, a flat rate of 10 % shall be applied;
  - (c) for an achievement/absorption coefficient below 50 %, a flat rate of 25 % shall be applied.
2. The flat rate shall be applied to the contribution from the ESI Fund determined on the basis of the expenditure declared by the Member State under the priority that meets the conditions referred to in the first subparagraph of Article 22(7) of Regulation (EU) No 1303/2013, after the application of any other financial corrections.

For priorities concerning more than one ESI Fund or category of region, the flat rate shall be applied to each ESI Fund and/or category of region.

3. External factors contributing to a serious failure to achieve the targets, other than those referred to in the third subparagraph of Article 22(7) of Regulation (EU) No 1303/2013, shall be considered on a case-by-case basis. The flat-rate correction set out in paragraph 1 may be reduced by up to 50%, taking account of the extent to which the serious failure is attributed to these factors.
4. Where the application of the flat rate fixed in accordance with paragraph 1 would be disproportionate, the level of correction shall be reduced.

## **SECTION II**

### **FINANCIAL INSTRUMENTS**

#### *Article 4*

##### **Specific rules on the purchase of land**

(Article 37(13) of Regulation (EU) No 1303/2013)

1. Financial instruments financed by the ERDF, the Cohesion Fund and the EAFRD may support investments that include the purchase of land not built on and land built on for an amount not exceeding 10% of the programme contribution paid to the final recipient. In the case of guarantees, this percentage shall apply to the amount of the underlying loan or other risk-bearing instruments.
2. Where financial instruments provide support to final recipients in respect of infrastructure investments with the objective of supporting urban development or urban regeneration activities, the limit referred to in paragraph 1 is 20%.
3. In exceptional and duly justified cases, the managing authority may derogate from the limits in paragraphs 1 and 2 for operations concerning environmental conservation.

#### *Article 5*

##### **Combination of technical support with financial instruments**

(Article 37(13) of Regulation (EU) No 1303/2013)

Grants for technical support may be combined with financial instruments in a single operation pursuant to Article 37(7) of Regulation (EU) No 1303/2013 only for the purpose of technical preparation of the prospective investment for the benefit of the final recipient to be supported by that operation.

## Article 6

### **Specific rules on the role, liabilities and responsibility of bodies implementing financial instruments**

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

1. The bodies implementing financial instruments shall perform their obligations in accordance with applicable law and act with the degree of professional care, efficiency, transparency and diligence expected from a professional body experienced in implementing financial instruments. They shall ensure that:
  - (a) final recipients receiving support from financial instruments are selected with due account taken of the nature of the financial instrument and the potential economic viability of investment projects to be financed. The selection shall be transparent and justified on objective grounds and shall not give rise to a conflict of interest;
  - (b) final recipients shall be informed that funding is provided under programmes co-financed by the ESI Funds, in accordance with the requirements laid down in Article 115 of Regulation (EU) No 1303/2013 for the ERDF, the ESF and the Cohesion Fund, in Article 66(1)(c)(i) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council<sup>5</sup> for the EAFRD and in a future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020 for the EMFF (the 'EMFF Regulation');
  - (c) financial instruments provide support in a way which is proportionate and has the least distortive effect on competition;
  - (d) preferential remuneration of private investors or public investors operating under the market economy principle, as referred to in Article 37(2)(c) and Article 44(1)(b) of Regulation (EU) No 1303/2013, is proportionate to the risks taken by these investors and limited to the minimum necessary to attract such investors, which shall be ensured through terms and conditions and procedural safeguards.
2. As direct financial liability of the managing authority towards bodies implementing financial instruments or final recipients as well as its liability as regards any other debt or obligation of the financial instrument may not exceed the amount committed by the managing authority to the financial instrument under the relevant funding agreements, the bodies implementing financial instruments shall ensure that no claims can be made on the managing authority beyond the amount committed by it to the financial instrument.

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<sup>5</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).



3. The bodies implementing financial instruments shall be liable for reimbursement of the programme contributions affected by irregularities, together with interest and any other gains generated by these contributions.

Nevertheless the bodies implementing financial instruments shall not be liable for reimbursement of the amounts referred to in the first subparagraph provided that they demonstrate for a given irregularity that the following cumulative conditions are fulfilled:

- (a) the irregularity occurred at the level of final recipients or, in the case of a fund of funds, at the level of financial intermediaries or final recipients;
- (b) the bodies implementing financial instruments complied with paragraph 1 of this Article in relation to the programme contributions affected by the irregularity;
- (c) the amounts affected by the irregularity could not be recovered notwithstanding that the bodies implementing financial instruments pursued all applicable contractual and legal measures with due diligence.

#### *Article 7*

#### **Criteria for the selection of bodies implementing financial instruments**

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

1. When selecting a body to implement a financial instrument in accordance with Article 38(4) (a) and 38 (4) (b)(ii) and (b)(iii) of Regulation (EU) No 1303/2013, the managing authority shall satisfy itself that this body fulfils the following minimum requirements:
  - (a) entitlement to carry out relevant implementation tasks under Union and national law;
  - (b) adequate economic and financial viability;
  - (c) adequate capacity to implement the financial instrument, including organisational structure and governance framework providing the necessary assurance to the managing authority;
  - (d) existence of an effective and efficient internal control system;
  - (e) use of an accounting system providing accurate, complete and reliable information in a timely manner;
  - (f) agreement to be audited by Member State audit bodies, the Commission and the European Court of Auditors.
2. When selecting a body referred to in paragraph 1, the managing authority shall take due account of the nature of the financial instrument to be implemented, the body's experience with the implementation of similar financial instruments, the expertise

and experience of proposed team members, and the body's operational and financial capacity. The selection shall be transparent and justified on objective grounds and shall not give rise to a conflict of interest. At least the following selection criteria shall be used:

- (a) robustness and credibility of the methodology for identifying and appraising financial intermediaries or final recipients as applicable;
  - (b) the level of management costs and fees for the implementation of the financial instrument and the methodology proposed for their calculation;
  - (c) terms and conditions applied in relation to support provided to final recipients, including pricing;
  - (d) the ability to raise resources for investments in final recipients additional to programme contributions;
  - (e) the ability to demonstrate additional activity in comparison to present activity;
  - (f) in cases where the body implementing the financial instrument allocates its own financial resources to the financial instrument or shares the risk, proposed measures to align interests and to mitigate possible conflicts of interest.
3. Where a body that implements a fund of funds, including the EIB, further entrusts implementation tasks to a financial intermediary, it shall ensure that the requirements and criteria referred to in paragraphs 1 and 2 are met in respect of that financial intermediary.

#### *Article 8*

(Third subparagraph of Article 38(4) of Regulation (EU) No 1303/2013)

#### **Specific rules on guarantees delivered through financial instruments**

Where financial instruments provide guarantees, the following requirements shall be fulfilled:

- (a) an appropriate multiplier ratio shall be achieved between the amount of the programme contribution set aside to cover expected and unexpected losses from new loans or other risk-sharing instruments to be covered by the guarantees and the value of corresponding disbursed new loans or other risk-sharing instruments;
- (b) the multiplier ratio shall be established through a prudent *ex ante* risk assessment for the specific guarantee product to be offered, taking into account the specific market conditions, the investment strategy of the financial instrument, and the principles of economy and efficiency. The *ex ante* risk assessment may be reviewed where it is justified by subsequent market conditions;
- (c) the programme contribution committed to honour guarantees shall reflect that *ex ante* risk assessment;

- (d) if the financial intermediary or the entity benefiting from the guarantees has not disbursed the planned amount of new loans or other risk-sharing instruments to final recipients, the eligible expenditure shall be reduced proportionally.

#### *Article 9*

### **Management and control of financial instruments set up at national, regional transnational or cross-border level**

(Article 40(4) of Regulation (EU) No 1303/2013)

1. For operations involving support from programmes to financial instruments set up at national, regional transnational or cross-border level referred to in Article 38(1)(b) of Regulation (EU) No 1303/2013, the managing authority shall ensure that:
  - (a) the operation complies with applicable law, the relevant programme and the relevant funding agreement, both during the appraisal and selection process of the operation and during the set-up and implementation of the financial instrument;
  - (b) funding agreements contain provisions on audit requirements and on the audit trail in accordance with point 1(e) of Annex IV to Regulation (EU) No 1303/2013;
  - (c) management verifications are carried out throughout the programming period and during the set-up and implementation of the financial instruments in accordance with Article 125(4) of that Regulation for the ERDF, the ESF, the Cohesion Fund and the EMFF, and in accordance with Article 58(1) and (2) of Regulation (EU) No 1305/2013 for the EAFRD;
  - (d) supporting documents for expenditure declared as eligible are:
    - (i) kept for the operation by the managing authority, the financial intermediary, or the body that implements the fund of funds where the financial instrument is implemented through a fund of funds, in order to provide evidence of the use of the funds for the intended purposes, of compliance with applicable law and of compliance with the criteria and the conditions for funding under the relevant programmes;
    - (ii) available to allow verification of the legality and regularity of expenditure declared to the Commission;
  - (e) supporting documents allowing verification of compliance with Union and national law and with the conditions of funding include at least:
    - (i) documents on the establishment of the financial instrument;
    - (ii) documents identifying the amounts contributed by each programme and under each priority axis to the financial instrument, the expenditure that is eligible under the programmes and the interest and other gains

generated by support from the ESI Funds and use of resources attributable to the ESI Funds in accordance with Articles 43 and 44 of Regulation (EU) No 1303/2013;

- (iii) documents on the functioning of the financial instrument, including those related to monitoring, reporting and verifications;
- (iv) documents demonstrating compliance with Articles 43, 44 and 45 of Regulation (EU) No 1303/2013;
- (v) documents concerning exits of programme contributions and the winding-up of the financial instrument;
- (vi) documents on the management costs and fees;
- (vii) application forms, or equivalent, submitted by final recipients with supporting documents, including business plans and, when relevant, previous annual accounts;
- (viii) checklists and reports from the bodies implementing the financial instrument, where available;
- (ix) declarations made in connection with *de minimis* aid, if applicable;
- (x) agreements signed in connection with the support provided by the financial instrument, including for equity, loans, guarantees or other forms of investment provided to final recipients;
- (xi) evidence that the support provided through the financial instrument was used for its intended purpose;
- (xii) records of the financial flows between the managing authority and the financial instrument, and within the financial instrument at all levels, down to the final recipients, and in the case of guarantees proof that underlying loans were disbursed;
- (xiii) separate records or accounting codes for programme contribution paid or guarantee committed by the financial instrument for the benefit of the final recipient.

2. For operations involving support from programmes to financial instruments under the ERDF, the ESF, the Cohesion Fund and the EMFF, the audit authorities shall ensure that financial instruments are audited throughout the programming period until closure both in the framework of systems audits and audits of operations in accordance with Article 127(1) of that Regulation.

For operations involving support from programmes to financial instruments under the EAFRD, the audit bodies shall ensure that financial instruments are audited throughout the programming period until closure in the framework of systems audits

and audits of operations in accordance with Article 59 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council<sup>6</sup>.

3. Where financial instruments are implemented by the EIB pursuant to Article 38(4)(b)(i) of Regulation (EU) No 1303/2013:
  - (a) the managing authority shall mandate a firm which shall operate under a common framework established by the Commission to carry out on-the-spot verifications on the operation within the meaning of Article 125(5)(b) of Regulation (EU) No 1303/2013;
  - (b) the audit authority shall mandate a firm which shall operate under a common framework established by the Commission to carry out audits on the operation.

The audit authority shall base its audit opinion on the basis of the information provided by the firm mandated.

4. In the absence of a common framework established by the Commission as referred to in paragraph 3, the managing authority shall submit a proposed methodology for carrying out on-the-spot verifications and the audit authority shall submit a proposed methodology for audits for agreement by the Commission.

#### *Article 10*

### **Rules for withdrawal of payments to financial instruments and consequent adjustments in respect of applications for payment**

(Article 41(3) of Regulation (EU) No 1303/2013)

Member States and managing authorities may withdraw contributions from programmes to the financial instruments referred to in point (a) of Article 38(1) and financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a) and (b) of Article 38(4) of Regulation (EU) No 1303/2013 only if the contributions have not already been included in an application for payment as referred to in Article 41 of that Regulation. However, as regards financial instruments supported by the ERDF, the ESF, the Cohesion Fund and the EMFF, contributions may also be withdrawn if the next payment application is amended to withdraw or replace the corresponding expenditure.

#### *Article 11*

### **System of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies**

(Third subparagraph of Article 42(1) of Regulation (EU) No 1303/2013)

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<sup>6</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agriculture policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

1. Capitalised interest rate subsidies and guarantee fee subsidies referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013 shall be calculated at the end of the eligibility period as the total of discounted payment obligations for the purposes and periods laid down in that Article, and in accordance with the relevant funding agreements.
2. Any resources left in the escrow account after the period referred to in Article 42(1)(c) of Regulation (EU) No 1303/2013, or as a result of an unexpected winding-up of the financial instrument before the end of that period, shall be used in accordance with Article 45 of that Regulation.

### *Article 12*

#### **Criteria for determining management costs and fees on the basis of performance**

(Article 42(6) of Regulation (EU) No 1303/2013)

1. The managing authority shall calculate management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 on the basis of the following performance based criteria as referred to in Article 42(5) of that Regulation:
  - (a) the disbursement of contributions provided by ESI Funds programme;
  - (b) the resources paid back from investments or from the release of resources committed for guarantee contracts;
  - (c) the quality of measures accompanying the investment before and after the investment decision to maximise its impact; and
  - (d) the contribution of the financial instrument to the objectives and outputs of the programme.
2. The managing authority shall inform the monitoring committee set up in accordance with Article 47 of Regulation (EU) No 1303/2013 of the provisions regarding the performance-based calculation of management costs incurred or of the management fees of the financial instrument. The monitoring committee shall receive reports on an annual basis on the management costs and fees effectively paid in the preceding calendar year.

### *Article 13*

#### **Thresholds for management costs and fees**

(Article 42(5) and (6) of Regulation (EU) No 1303/2013)

1. For a body that implements a fund of funds, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 shall not exceed the sum of:

- (a) 3% for the first 12 months after the signature of the funding agreement, 1% for the next 12 months after the signature of the funding agreement, thereafter 0,5% per annum, of the programme contributions paid to the fund of funds, calculated *pro rata temporis* from the date of effective payment to the fund of funds until the end of the eligibility period, repayment to the managing authority or the date of winding up, whichever is earlier; and
  - (b) 0,5% per annum of programme contributions paid by the fund of funds to financial intermediaries, calculated *pro rata temporis* from the moment of effective payment by the fund of funds until repayment to the fund of funds, the end of the eligibility period or the date of winding up, whichever is earlier.
2. For bodies implementing financial instruments providing equity, loans, guarantees, as well as micro-credits, including when combined with grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, management costs and fees which can be declared as eligible expenditure pursuant to Article 42(1)(d) of Regulation (EU) No 1303/2013 shall not exceed the sum of:
- (a) a base remuneration which shall be calculated as follows:
    - (i) for a financial instrument providing equity, 2,5% per annum for the first two years after the signature of the funding agreement, thereafter 1% per annum, of programme contributions committed under the relevant funding agreement to the financial instrument, calculated *pro-rata temporis* from the date of signature of the relevant funding agreement until the end of the eligibility period, repayment of the contributions to the managing authority or to the fund of funds, or the date of winding up, whichever is earlier;
    - (ii) for a financial instrument in all other cases, 0,5% per annum of programme contributions paid to the financial instrument, calculated *pro rata temporis* from the date of effective payment to the financial instrument until the end of the eligibility period, the repayment to the managing authority, or to the fund of funds, or the date of winding up, whichever is earlier; and
  - (b) a performance-based remuneration which shall be calculated as follows:
    - (i) for a financial instrument providing equity, 2,5% per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of equity, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated *pro rata temporis* from the date of payment to the final recipient until repayment of the investment, the end of the recovery procedure in the case of write-offs or the end of the eligibility period, whichever is earlier;

- (ii) for a financial instrument providing loans, 1% per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of loans, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated *pro rata temporis* from the date of payment to the final recipient until repayment of the investment, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;
- (iii) for a financial instrument providing guarantees, 1,5% per annum of the programme contributions committed to outstanding guarantee contracts within the meaning of Article 42(1)(b) of Regulation (EU) No 1303/2013, as well as from re-used resources attributable to programme contributions, calculated *pro rata temporis* from the date of commitment until maturity of the guarantee contract, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;
- (iv) for a financial instrument providing micro-credit, 1,5% per annum of the programme contributions paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 to final recipients in the form of micro-credit, as well as of resources re-invested which are attributable to programme contributions, which have yet to be paid back to the financial instrument, calculated *pro rata temporis* from the date of payment to the final recipient, until repayment of the investment, the end of the recovery procedure in the case of defaults or the end of the eligibility period, whichever is earlier;
- (v) for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 0,5% of the grant amount paid within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 for the benefit of final recipients.

The provisions of this paragraph shall apply to a body implementing financial instrument providing guarantees notwithstanding that the same body is implementing a fund of funds, subject to the provisions of paragraph 4.

3. The aggregate amount of management costs and fees over the eligibility period laid down in Article 65(2) of Regulation (EU) No 1303/2013 shall not exceed the following limits:
  - (a) for a fund of funds, 7% of the total amount of programme contributions paid to the fund of funds;
  - (b) for a financial instrument providing equity, 20% of the total amount of programme contributions paid to the financial instrument;



- (c) for a financial instrument providing loans, 8% of the total amount of programme contributions paid to the financial instrument;
  - (d) for a financial instrument providing guarantees, 10% of the total amount of programme contributions paid to the financial instrument;
  - (e) for a financial instrument providing micro-credit, 10% of the total amount of programme contributions paid to the financial instrument;
  - (f) for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies in accordance with Article 37(7) of Regulation (EU) No 1303/2013, 6% of the total amount of programme contributions paid to the financial instrument.
4. Where the same body implements a fund of funds and a financial instrument, neither the amounts of eligible management cost and fees under paragraphs 1 and 2, nor the limits set out in paragraph 3 shall be cumulated for the same programme contributions or the same resources re-invested which are attributable to programme contributions.
  5. Where the majority of the capital invested in financial intermediaries providing equity is provided by private investors or public investors operating under the market economy principle and the programme contribution is provided *pari passu* with the private investors, the management costs and fees shall conform to market terms and shall not exceed those payable by the private investors.
  6. The thresholds laid down in paragraphs 1, 2 and 3 of this Article may be exceeded where they are charged by a body implementing the financial instrument, including, where applicable, when it implements the fund of funds, which has been selected through a competitive tender in accordance with the applicable rules and the competitive tender proved the need for higher management costs and fees.

#### *Article 14*

### **Reimbursement of capitalised management costs and fees for equity-based instruments and micro-credit**

(Article 42(6) of Regulation (EU) No 1303/2013)

1. Capitalised management costs and fees to be reimbursed as eligible expenditure in accordance with Article 42(2) of Regulation (EU) No 1303/2013 shall be calculated at the end of the eligibility period as the total of discounted management costs and fees to be paid after the eligibility period for the period laid down in Article 42(2) of Regulation (EU) No 1303/2013, and in accordance with the relevant funding agreements.
2. Capitalised management costs and fees to be paid after the eligibility period for a financial instrument providing micro-credit shall not exceed 1% per annum of the programme contributions paid to the final recipients within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 in the form of loans and still to be paid

back to the financial instrument, calculated *pro rata temporis* from the end of the eligibility period until repayment of the investment, the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation, whichever is earlier.

3. Capitalised management costs and fees to be paid after the eligibility period for a financial instrument providing equity shall not exceed 1,5% per annum of the programme contributions paid to the final recipients within the meaning of Article 42(1)(a) of Regulation (EU) No 1303/2013 in the form of equity and still to be paid back to the financial instrument, calculated *pro rata temporis* from the end of the eligibility period until repayment of the investment, the end of the recovery procedure in the case of defaults or the period referred to in Article 42(2) of that Regulation, whichever is earlier.
4. Any resources left in the escrow account after the period referred to under Article 42(2) of Regulation (EU) No 1303/2013, or as a result of an unexpected winding-up of the financial instrument before the end of that period, shall be used in accordance with Article 45 of that Regulation.

### **SECTION III**

#### **METHOD FOR CALCULATING THE DISCOUNTED NET REVENUE OF OPERATIONS GENERATING NET REVENUE**

##### *Article 15*

##### **Method for calculating discounted net revenue**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. For the purposes of the application of the method referred to in point (b) of the first subparagraph of Article 61(3) of Regulation (EU) No 1303/2013, the discounted net revenue of the operation shall be calculated by deducting the discounted costs from the discounted revenue and, where applicable, by adding the residual value of the investment.
2. The discounted net revenue of an operation shall be calculated over a specific reference period applicable to the sector of that operation as set out in Annex I. The reference period shall include the implementation period of the operation.
3. Revenues and costs shall be determined by applying the incremental method based on a comparison of revenue and costs in the scenario of the new investment with the revenues and costs in the scenario without the new investment.

Where an operation consists of a new asset, the revenues and costs shall be those of the new investment.

4. Where value added tax is not an eligible cost according to Article 69(3)(c) of Regulation (EU) No 1303/2013, the calculation of discounted net revenue shall be based on figures excluding value added tax.

#### *Article 16*

#### **Determination of revenues**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

For the purposes of the calculation of discounted net revenue, the revenues shall be determined on the following basis:

- (a) where applicable, user charges shall be fixed in compliance with the polluter-pays principle, and, if appropriate, shall take into account affordability considerations;
- (b) revenue shall not include transfers from national or regional budgets or national public insurance systems;
- (c) where an operation adds new assets to complement a pre-existing service or infrastructure, both contributions from new users and additional contributions from existing users of the new or enlarged service or infrastructure shall be taken into account.

#### *Article 17*

#### **Determination of costs**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

For the purposes of the calculation of discounted net revenue, the following costs occurring during the reference period referred to in article 15 (2) shall be taken into consideration:

- (a) replacement costs of short-life equipment ensuring the technical functioning of the operation;
- (b) fixed operating costs, including maintenance costs, such as staff, maintenance and repair, general management and administration, and insurance; and
- (c) variable operating costs, including maintenance costs, such as consumption of raw materials, energy, other process consumables, and any maintenance and repair needed to extend the lifetime of the operation.

*Article 18*  
**Residual value of the investment**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. Where the assets of an operation have design lifetimes in excess of the reference period referred to in article 15(2), their residual value shall be determined by computing the net present value of cash flows in the remaining life years of the operation. Other methods of calculating residual value may be used in duly justified circumstances.
2. The residual value of the investment shall be included in the calculation of discounted net revenue of the operation only if the revenues outweigh the costs referred to in Article 17.

*Article 19*  
**Discounting of cash flows**

(Seventh subparagraph of Article 61(3) of Regulation (EU) No 1303/2013)

1. Only cash flows to be paid out or received by the operation shall be taken into consideration when calculating costs and revenue. Cash flows shall be established for each year in which they are paid out or received by the operation over the reference period referred to in article 15(2).
2. Non-cash accounting items such as depreciation, any reserves for future replacement costs and contingency reserves shall be excluded from the calculation.
3. Cash flows shall be discounted back to the present using a financial discount rate of 4 % in real terms as an indicative benchmark for public investment operations co-financed by the ESI Funds.
4. Member States may use a financial discount rate other than 4 % if they provide a justification for that benchmark and ensure it is used consistently across similar operations in the same sector.
5. Values other than 4 % may be justified on the grounds of:
  - (a) the Member State's specific macroeconomic conditions and international macroeconomic trends and conjunctures; or
  - (b) the nature of the investor or the implementation structure, such as public private partnerships; or
  - (c) the nature of the sector concerned.
6. In order to establish specific financial discount rates, Member States shall estimate the average long-term return from an alternative, risk-free basket of investments, whether domestic or international, which they deem most relevant. Information on the different financial discount rates shall be made available to beneficiaries.

## SECTION IV

### DEFINITION OF THE FLAT RATES FOR INDIRECT COSTS AND RELATED METHODS APPLICABLE IN OTHER UNION POLICIES

#### Article 20

#### Flat rate financing for indirect costs based on Regulation (EU) No 1290/2013

(Second subparagraph of Article 68(1) of Regulation (EU) No 1303/2013)

1. Indirect costs may be calculated by applying a flat rate established in accordance with Article 29(1) of Regulation (EU) No 1290/2013 for the following types of operations or projects forming part of operations:
  - (a) the operations supported by the ERDF under intervention field codes 056, 057 or 060-065 as set out in Table 1 of Annex to Commission Implementing Regulation (EU) No .../2014<sup>7</sup> and carried out under one of the investment priorities laid down in Article 5(1)(a) and (b), (2)(b), (3)(a) and (c), and (4)(f) of Regulation (EU) No 1301/2013 of the European Parliament and of the Council<sup>8</sup>;
  - (b) the operations supported by the ESF under intervention field code 04 as set out in Table 6 of Annex to Commission Implementing Regulation (EU) .../2014<sup>+</sup> and contributing to strengthening research, technological development and innovation in accordance with Article 3(2)(c) of Regulation (EU) No 1304/2013;

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<sup>+</sup> OJ: Please insert the publication reference (see footnote 11).

<sup>7</sup> Commission Implementing Regulation (EU) No .../2014 of [...] laying down pursuant to Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, the terms and conditions applicable to the electronic data exchange system between the Member States and the Commission and adopting pursuant to Regulation (EU) No 1299/2013 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 nomenclature of the categories of intervention for support from the European Regional Development Fund under the European territorial cooperation goal (OJ L [...], [...], p. [...]).

<sup>8</sup> Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).

<sup>+</sup> OJ: Please insert the number of the Regulation (see footnote 11).

- (c) the operations supported by the EAFRD in accordance with Articles 17, 26 or 35 of Regulation (EU) No 1305/2013 which contribute to the Union priority laid down in Article 5 (1) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council. Where the operation is programmed in accordance with Article 17 and 26 of Regulation (EU) No 1305/2013, only operations implemented by an operational group of the European Innovation Partnership funded under Article 35(1)(c) shall be considered;
- (d) the operations supported by the EMFF and programmed in accordance with Articles 28, 37 or 41(5) of the future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020.

#### *Article 21*

#### **Flat rate financing for indirect costs based on Regulation (EU, EURATOM) No 966/2012**

(Second subparagraph of Article 68(1) of Regulation (EU) No 1303/2013)

1. Indirect costs may be calculated by applying the flat rate established in accordance with Article 124(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>9</sup> [Financial Regulation] for the following types of operations or projects forming part of an operation:
  - (a) the operations supported by the ERDF under intervention field codes 085, 086 or 087 as set out in Table 1 of Annex to Commission Implementing Regulation (EU) No .../2014<sup>+</sup> and carried out under one of the investment priorities laid down in Article 5(5)(a) and (6)(d) of Regulation (EU) No 1301/2013;
  - (b) the operations supported by the ESF under intervention field code 01 as set out in Table 6 of Annex to Commission Implementing Regulation (EU) No .../2014<sup>+</sup> and contributing to supporting the shift towards a low carbon, climate resilient, resource-efficient and environmentally sustainable economy in accordance with Article 3(2)(a) of Regulation (EU) No 1304/2013;
  - (c) the operations supported by the EAFRD in accordance with Article 17 and 25 of Regulation (EU) No 1305/2013 which contribute to the Union priority 4 ‘restoring, preserving and enhancing ecosystems related to agriculture and forestry’ or the Union priority 5 ‘promoting resource efficiency and supporting the shift toward a low carbon and climate resilient economy in agriculture, food and forestry sectors’, in accordance with Article 5(4) and (5) of that Regulation;

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<sup>9</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>+</sup> OJ: Please insert the number of the Regulation (see footnote 11).

<sup>+</sup> OJ: Please insert the number of the Regulation (see footnote 11).

- (d) the operation supported by the EMFF and programmed in accordance with Articles 36, 38, 39(1), 46(1)(e) and (i), 54, 79c (1)(b) of the future Union legal act establishing the conditions for the financial support for maritime and fisheries policy for the programming period 2014-2020,

## Chapter III

### **Provisions supplementing Part Three Regulation (EU) No 1303/2013 applicable to the ERDF and the Cohesion Fund as regards the methodology to be used for carrying out the quality review of major projects**

#### *Article 22*

#### **Requirements for independent experts carrying out the quality review**

(Fourth paragraph of Article 101 of Regulation (EU) No 1303/2013)

1. The quality review of major projects referred to in the third paragraph of Article 101 of Regulation (EU) No 1303/2013, shall be carried out by independent experts that have:
  - (a) significant technical experience of all stages of the project cycle;
  - (b) broad international experience of the investment sectors concerned;
  - (c) significant expertise in the analysis and evaluation of socio-economic benefits;
  - (d) significant knowledge and experience of relevant Union law, policies and procedures;
  - (e) independence from all authorities involved directly or indirectly in the approval, implementation, or operation of the major project;
  - (f) no conflict of interest at any level in relation to a major project;
  - (g) no commercial interest in relation to a major project;
  - (h) the necessary linguistic competence.
2. Where a Member State proposes to mandate independent experts other than those supported by technical assistance at the initiative of the Commission in accordance with Article 58 of Regulation (EU) No 1303/2013, it shall in accordance with the third paragraph of Article 101 of that Regulation submit a request for the Commission's agreement. That agreement shall be based on documents

demonstrating compliance of the experts with the requirements laid down in paragraph 1.

The Commission shall inform the Member State within three months from the submission of the request whether it agrees with the proposal regarding the independent experts.

### *Article 23*

#### **Quality review of major projects**

(Fourth paragraph of Article 101 of Regulation (EU) No 1303/2013)

1. The independent experts shall carry out their assessment on the basis of the information referred to in points (a) to (i) of the first paragraph of Article 101 of Regulation (EU) No 1303/2013. The independent experts may request additional elements relating to this information which they deem necessary for the quality review.

The Member State and the independent experts may agree that this work shall be complemented by site visits.

The independent experts may, in agreement with the Member States, consult the Commission on relevant State aid issues for the purpose of their assessment.

2. The independent experts shall for the purposes of the quality review undertake the following steps:
  - (a) the independent experts shall verify that the operation is a major project within the meaning of Article 100 of Regulation (EU) No 1303/2013, that the major project is not a completed operation within the meaning of Articles 2(14) and 65(6) of that Regulation, and that the major project is included within the relevant operational programme;
  - (b) the independent experts shall check the completeness, consistency and accuracy of the information under points (a) to (i) of the first subparagraph of Article 101 of Regulation (EU) No 1303/2013 provided for in the format referred to in the fifth subparagraph of Article 101 of Regulation (EU) No 1303/2013;
  - (c) the independent experts shall appraise the quality of the major project on the basis of the criteria set out in Annex II to this Regulation;
  - (d) the independent experts shall produce an independent quality review report (hereinafter the 'IQR report') in the format provided for in the third subparagraph of Article 102(1) of Regulation (EU) No 1303/2013. In the IQR report, the independent experts shall formulate and justify their statements in an unambiguous manner for the elements referred to in this paragraph.



3. A major project is appraised positively by the quality review in the meaning of Article 102(1) of Regulation (EU) No 1303/2013 if the independent experts conclude that all the criteria referred to in Annex II of this Regulation have been fulfilled.

## **Chapter IV**

### **Provisions supplementing Part Four of Regulation (EU) No 1303/2013 applicable to the ERDF, the ESF, the Cohesion Fund and the EMFF**

#### **SECTION I**

##### **DATA TO BE RECORDED AND STORED IN COMPUTERISED FORM**

###### *Article 24*

###### **Data to be recorded and stored in computerised form**

(Article 125(8) of Regulation (EU) No 1303/2013)

1. The information on data to be recorded and stored in computerised form for each operation in the monitoring system set up in accordance with Article 125(2)(d) of Regulation (EU) No 1303/2013 is set out in Annex III to this Regulation.
2. Data shall be recorded and stored for each operation, including data on individual participants, where applicable, in order to allow it to be aggregated where this is necessary for the purposes of monitoring, evaluation, financial management, verification and audit. It shall also allow the aggregation of such data cumulatively for the entire programming period. For the ESF, the data shall be recorded and stored in a way that allows the managing authorities to perform the tasks related to monitoring and evaluation in conformity with the requirements set out in Article 56 of Regulation (EU) No 1303/2013 and Articles 5 and 19 and Annexes I and II of Regulation (EU) No 1304/2013.
3. Where an operation is supported by more than one operational programme, priority or Fund or under more than one category of region, the information referred to in fields 23-113 of Annex III shall be recorded in a manner that allows the data to be retrieved broken down by operational programme, priority, Fund or category of region. It shall also be possible to retrieve the indicator data referred to in fields 31-40 of Annex III broken down by investment priority and by gender, where applicable.

## SECTION II

### THE AUDIT TRAIL AND USE OF THE DATA COLLECTED DURING AUDITS

#### Article 25

#### **Detailed minimum requirements for the audit trail**

(Article 125(9) of Regulation (EU) No 1303/2013)

1. The detailed minimum requirements for the audit trail in respect of the accounting records to be maintained and the supporting documents to be held shall be the following:
  - (a) the audit trail shall allow the application of the selection criteria established by the monitoring committee for the operational programme to be verified;
  - (b) in relation to grants and repayable assistance under Article 67(1)(a) of Regulation (EU) No 1303/2013, the audit trail shall allow the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries as regards operations co-financed under the operational programme;
  - (c) in relation to grants and repayable assistance under Articles 67(1)(b) and (c) and 109 of Regulation (EU) No 1303/2013 and under Article 14(1) of Regulation (EU) No 1304/2013, the audit trail shall allow the aggregate amounts certified to the Commission to be reconciled with the detailed data relating to outputs or results and supporting documents held by the certifying authority, managing authority, intermediate bodies and beneficiaries, including where applicable documents on the method of setting the standard scales for unit costs and the lump sums, as regards operations co-financed under the operational programme;
  - (d) in relation to costs determined in accordance with Articles 67(1)(d) and 68(1)(a) of Regulation (EU) No 1303/2013, the audit trail shall demonstrate and justify the calculation method, where applicable, and the basis on which the flat rates have been decided, and the eligible direct costs or costs declared under other chosen categories to which the flat rate applies;
  - (e) in relation to costs determined in accordance with Article 68(1)(b) and (c) of Regulation (EU) No 1303/2013, Article 14(2) of Regulation (EU) No 1304/2013 and Article 20 of Regulation (EU) No 1299/2013, the audit trail shall allow the eligible direct costs to which the flat rate applies to be substantiated;
  - (f) the audit trail shall allow the payment of the public contribution to the beneficiary to be verified;
  - (g) for each operation, as appropriate, the audit trail shall include the technical specifications and financing plan, documents concerning the grant approval,

documents relating to public procurement procedures, reports by the beneficiary and reports on verifications and audits carried out;

- (h) the audit trail shall include information on management verifications and audits carried out on the operation;
- (i) without prejudice to Article 19(3) and Annexes I and II to Regulation (EU) No 1304/2013, the audit trail shall allow data in relation to output indicators for the operation to be reconciled with targets and reported data and result for the programme;
- (j) for financial instruments, the audit trail shall include the supporting documents referred to in Article 9(1)(g) of this Regulation.

For costs referred to in points (b) and (c), the audit trail shall allow the calculation method used by the managing authority to be verified for compliance with Articles 67(5) and 68(1) of Regulation (EU) No 1303/2013 and Article 14(3) of Regulation (EU) No 1304/2013.

2. The managing authority shall ensure that a record is available of the identity and location of bodies holding all the supporting documents required to ensure an adequate audit trail meeting all the minimum requirements laid down in paragraph 1.

#### *Article 26*

#### **Use of the data collected during audits carried out by Commission officials or authorised Commission representatives**

(Article 127(8) of Regulation (EU) No 1303/2013)

1. The Commission shall take all necessary measures to prevent any unauthorised disclosure of, or access to, the data collected by the Commission in the course of its audits.
2. The Commission shall use the data collected in the course of its audits for the sole purpose of fulfilling its responsibilities under Article 75 of Regulation (EU) No 1303/2013. The European Court of Auditors and the European Anti-Fraud Office shall have access to the data collected.
3. The data collected shall not be sent to persons other than those in the Member States or within the Union institutions whose duties require that they have access to it in accordance with the applicable rules without the express agreement of the Member State supplying the data.

**SECTION III**  
**SCOPE AND CONTENT OF AUDITS OF OPERATIONS AND ACCOUNTS AND**  
**METHODOLOGY FOR THE SELECTION OF THE SAMPLE OF OPERATIONS**

Article 27

**Audits of operations**

(Article 127(7) of Regulation (EU) No 1303/2013)

1. Audits of operations shall be carried out in respect of each accounting year on a sample of operations selected by a method established or approved by the audit authority in accordance with Article 28 of this Regulation.
2. Audits of operations shall be carried out on the basis of supporting documents constituting the audit trail and shall verify the legality and regularity of expenditure declared to the Commission, including the following aspects:
  - (a) that the operation was selected in accordance with the selection criteria for the operational programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the operational programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained;
  - (b) that the expenditure declared to the Commission corresponds to the accounting records and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 25 of this Regulation;
  - (c) that for expenditure declared to the Commission determined in accordance with Article 67(1)(b) and (c) and Article 109 of Regulation (EU) No 1303/2013 and Article 14(1) of Regulation (EU) No 1304/2013, outputs and results underpinning payments to the beneficiary have been delivered, participant data or other records related to outputs and results are consistent with the information submitted to the Commission and that the required supporting documentation demonstrates an adequate audit trail as set out in Article 25 of this Regulation.

Audits shall also verify that the public contribution has been paid to the beneficiary in accordance with Article 132(1) of Regulation (EU) No 1303/2013.

3. Audits of operations shall, where applicable, include on-the-spot verification of the physical implementation of the operation.
4. Audits of operations shall verify the accuracy and completeness of the corresponding expenditure recorded by the certifying authority in its accounting system and the reconciliation of the audit trail at all levels.
5. Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the operational programme, the audit authority shall

ensure further examination, including, where necessary, additional audits to establish the scale of such problems, and shall recommend the necessary corrective actions.

6. Only expenditure falling within the scope of an audit carried out pursuant to paragraph 1 shall be counted towards the amount of expenditure audited, for the purposes of reporting to the Commission on annual coverage. For those purposes, the model for the control report set out on the basis of Article 127(6) of Regulation (EU) 1303/2013 shall be used.

## *Article 28*

### **Methodology for the selection of the sample of operations**

(Article 127(7) of Regulation (EU) No 1303/2013)

1. The audit authority shall establish the method for the selection of the sample ('the sampling method') in accordance with the requirements set out in this Article taking into account the internationally accepted auditing standards, INTOSAI, IFAC or IIA.
2. In addition to the explanations provided in the audit strategy, the audit authority shall keep a record of the documentation and professional judgement used to establish the sampling methods, covering the planning, selection, testing and evaluation stages, in order to demonstrate that the established method is suitable.
3. A sample shall be representative of the population from which it is selected and enable the audit authority to draw up a valid audit opinion in accordance with Article 127(5)(a) of Regulation (EU) No 1303/2013. That population shall comprise the expenditure of an operational programme or group of operational programmes covered by a common management and control system, which is included in the payment applications submitted to the Commission in accordance with Article 131 of Regulation (EU) No 1303/2013 for a given accounting year. The sample may be selected during or after the accounting year.
4. For the purpose of application of Article 127 (1) of Regulation (EU) No 1303/2013, a sampling method is statistical when it ensures:
  - (i) a random selection of the sample items;
  - (ii) the use of probability theory to evaluate sample results, including measurement and control of the sampling risk and of the planned and achieved precision.
5. The sampling method shall ensure a random selection of each sampling unit in the population by using random numbers generated for each population unit in order to select the units constituting the sample or through systematic selection by using a random starting point and applying a systematic rule to select the additional items.
6. The sampling unit shall be determined by the audit authority, based on professional judgement. The sampling unit may be an operation, a project within an operation or a payment claim by a beneficiary. Information on the type of sampling unit

determined and on the professional judgement used for that purpose shall be included in the control report.

7. Where the total expenditure relating to a sampling unit for the accounting year is a negative amount it shall be excluded from the population referred to in paragraph 3 above and shall be audited separately. The audit authority may also draw a sample of this separate population.
8. Where conditions for the proportional control provided for in Article 148(1) of Regulation (EU) No 1303/2013 apply, the audit authority may exclude the items referred to in that Article from the population to be sampled. If the operation concerned has already been selected in the sample, the audit authority shall replace it using an appropriate random selection.

9. All expenditure declared to the Commission in the sample shall be subject to audit.

Where the selected sampling units include a large number of underlying payment claims or invoices, the audit authority may audit them through sub-sampling, selecting the underlying payment claims or invoices by using the same sampling parameters used to select the sampling units of the main sample.

In that case, appropriate sample sizes shall be calculated within each sample unit to be audited and, in any event, shall not be less than 30 underlying payment claims or invoices for each sampling unit.

10. The audit authority may stratify a population by dividing a population into sub-populations, each of which is a group of sampling units which have similar characteristics, in particular in terms of risk or expected error rate or where the population includes operations consisting of financial contributions from an operational programme to financial instruments or other high-value items.
11. The audit authority shall evaluate the reliability of the system as high, average or low, taking into account the results of systems audits to determine the technical parameters of sampling so that the combined level of assurance obtained from the systems audits and audits of operations is high. For a system assessed as having high reliability the confidence level used for sampling operations shall not be less than 60%. For a system assessed as having low reliability the confidence level used for sampling operations shall not be less than 90%. The maximum materiality level shall be 2% of the expenditure referred to in paragraph 3.
12. Where irregularities or a risk of irregularities have been detected, the audit authority shall decide on the basis of professional judgement whether it is necessary to audit a complementary sample of additional operations or parts of operations that were not audited in the random sample in order to take account of specific risk factors identified.
13. The audit authority shall analyse the results of the audits of the complementary sample separately, draw conclusions based on those results and communicate them to the Commission in the annual control report. Irregularities detected in the complementary sample shall not be included in the calculation of the projected random error of the random sample.

14. On the basis of the results of the audits of operations for the purpose of the audit opinion and control report referred to in Article 127(5)(a) of Regulation (EU) No 1303/2013, the audit authority shall calculate a total error rate, which shall be the sum of the projected random errors and, if applicable, systemic errors and uncorrected anomalous errors, divided by the population.

#### *Article 29*

#### **Audits of accounts**

(Article 127(7) of Regulation (EU) No 1303/2013)

1. The audits of accounts referred to in Article 137(1) of Regulation (EU) No 1303/2013 shall be carried out by the audit authority in respect of each accounting year.
2. The audit of the accounts shall provide reasonable assurance on the completeness, accuracy and veracity of the amounts declared in the accounts.
3. For the purposes of paragraphs 1 and 2, the audit authority shall take into account, in particular, the results of the system audits carried out on the certifying authority and of the audits on operations.
4. The system audit shall include verification of the reliability of the accounting system of the certifying authority and, on a sample basis, of the accuracy of expenditure of amounts withdrawn and amounts recovered recorded in the certifying authority's accounting system.
5. For the purpose of the audit opinion, in order to conclude that the accounts give a true and fair view, the audit authority shall verify that all elements required by Article 137 of Regulation (EU) No 1303/2013 are correctly included in the accounts and correspond to the supporting accounting records maintained by all relevant authorities or bodies and beneficiaries during the audit work performed by the audit authority. The audit authority shall in particular, on the basis of the accounts to be provided to it by the certifying authority, verify that:
  - (a) the total amount of eligible expenditure declared in accordance with Article 137(1)(a) of Regulation (EU) No 1303/2013 agrees with the expenditure and the corresponding public contribution included in payment applications submitted to the Commission for the relevant accounting year and, if there are differences, that adequate explanations have been provided in the accounts for the reconciling amounts;
  - (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year, the recoveries carried out pursuant to Article 71 of Regulation (EU) No 1303/2013, and the irrecoverable amounts presented in the accounts correspond to the amounts entered in the accounting systems of the certifying authority and are based on decisions by the responsible managing authority or certifying authority;

- (c) expenditure has been excluded from the accounts in accordance with Article 137(2) of Regulation (EU) No 1303/2013, where applicable, and that all the required corrections are reflected in the accounts for the accounting year concerned;
- (d) the programme contributions paid to financial instruments and advances of State aid paid to beneficiaries are supported by the information available from the managing authority and from the certifying authority.

Verifications referred to in points (b), (c) and (d) may be carried out on a sample basis.

## **SECTION VII**

### **FINANCIAL CORRECTIONS BY THE COMMISSION IN RELATION TO SYSTEMS DEFICIENCIES**

#### *Article 30*

#### **Criteria for determining serious deficiencies in the effective functioning of management and control systems**

(Article 144(6) of Regulation (EU) No 1303/2013)

1. The Commission shall base its assessment of the effective functioning of management and control systems on the results of all available systems audits, including tests of controls, and of audits of operations.

The assessment shall cover the internal control environment of the programme, the management and control activities of the managing and certifying authorities, monitoring by the managing and certifying authority, and the control activities of the audit authority and shall be based on verification of compliance with the key requirements set out in Table 1 of Annex IV.

The fulfilment of these key requirements shall be assessed on the basis of the categories set out in Table 2 of Annex IV.

2. The main types of serious deficiency in the effective functioning of the management and control system shall be cases where any of the key requirements referred to in points 2, 4, 5, 13, 15, 16 and 18 of Table 1 of Annex IV, or two or more of the other key requirements in Table 1 of Annex IV are assessed as falling into categories 3 or 4 set out in Table 2 of Annex IV.



*Article 31*

**Criteria for applying flat rates or extrapolated financial corrections and criteria for determining the level of financial correction**

(Article 144(6) of Regulation (EU) No 1303/2013)

1. Financial corrections shall be applied for all or part of an operational programme, where the Commission identifies one or more serious deficiencies in the functioning of the management and control system.

Notwithstanding the first subparagraph, extrapolated financial corrections shall be applied, for all or part of an operational programme, where the Commission identifies systemic irregularities in a representative sample of operations, allowing for a more accurate quantification of the risk for the Union budget. In this case, the results of the examination of the representative sample shall be extrapolated to the rest of the population from which the sample was drawn for the purpose of determining the financial correction.

2. The level of flat-rate correction shall be fixed taking into account the following elements:
  - (a) the relative importance of the serious deficiency or serious deficiencies in the context of the management and control system as a whole;
  - (b) the frequency and extent of the serious deficiency or serious deficiencies;
  - (c) the degree of risk of loss for the Union budget.
3. Taking into account these elements, the level of financial correction shall be fixed as follows:
  - (a) where the serious deficiency or serious deficiencies in the management and control system is so fundamental, frequent or widespread that it represents a complete failure of the system that puts at risk the legality and regularity of all expenditure concerned, a flat rate of 100 % shall be applied;
  - (b) where the serious deficiency or serious deficiencies in the management and control system is so frequent and widespread that it represents an extremely serious failure of the system that puts at risk the legality and regularity of a very high proportion of the expenditure concerned, a flat rate of 25 % shall be applied;
  - (c) where the serious deficiency or serious deficiencies in the management and control system is due to the system not fully functioning or functioning so poorly or so infrequently that it puts at risk the legality and regularity of a high proportion of the expenditure concerned, a flat rate of 10 % shall be applied;
  - (d) where the serious deficiency or serious deficiencies in the management and control system is due to the system not functioning consistently so that it puts at risk the legality and regularity of a significant proportion of the expenditure concerned, a flat rate of 5 % shall be applied.

4. Where the application of a flat rate fixed in accordance with paragraph 4 would be disproportionate, the level of correction shall be reduced.
5. Where, due to a failure of the responsible authorities to take adequate corrective measures following the application of a financial correction in an accounting year, the same serious deficiency or serious deficiencies is identified in a subsequent accounting year, the rate of correction may, due to the persistence of the serious deficiency or serious deficiencies, be increased to a level not exceeding that of the next higher category.

#### *Article 32*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 25 shall apply from 1 December 2014, as regards information on data recorded and stored referred to in Annex III, with the exception of data fields 23 to 40, 71 to 88 and 91 to 105. With regard to these fields of Annex III, Article 25 shall apply from 1 July 2015.

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

Done at Brussels, 3.3.2014

*For the Commission*  
*The President*  
*José Manuel BARROSO*