



Council of the
European Union

Brussels, 19 August 2014
(OR. en)

12548/14

ECOFIN 779
FC 26
FSTR 42
REGIO 88

COVER NOTE

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

date of receipt: 30 July 2014

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

No. Cion doc.: COM(2014) 494 final

Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS
Guidelines on the application of the measures linking effectiveness of the
European Structural and Investment Funds to sound economic governance
according to Article 23 of Regulation (EU) 1303/2013

Delegations will find attached document COM(2014) 494 final.

Encl.: COM(2014) 494 final



Brussels, 30.7.2014
COM(2014) 494 final

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**Guidelines on the application of the measures linking effectiveness of the European
Structural and Investment Funds to sound economic governance according to Article 23
of Regulation (EU) 1303/2013**

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1. Introduction

In the period 2014-20, support from the European Structural and Investment Funds (the ‘ESI funds’)¹ is closely linked to the respect of EU economic governance. In the past, the conditions applicable for access to fund assistance was limited to one fund — the Cohesion Fund (Article 4 of Regulation (EC) 1084/2006),² and to one economic governance procedure — the Excessive Deficit Procedure.

This linkage has been considerably strengthened. It is built on a reinforcement and broadening of the scope of economic governance in response to the economic and financial crisis, and on the objective of increasing efficiency of EU spending in a context of fiscal constraint. Article 23 of Regulation (EU) No 1303/2013, the Common Provisions Regulation (CPR)³ on the five ESI funds, lays down the provisions linking the effectiveness of the funds to sound economic governance.

Unlike the previous programming period, all five ESI funds are now conditional on respect of economic governance procedures. This conditionality applies through two distinct mechanisms:

- a first strand, covering in particular paragraphs 1 to 8 of Article 23, whereby the Commission may request a Member State to reprogramme part of its funding when this is justified by the economic and employment challenges identified under various economic governance procedures; and
- a second strand, covering in particular paragraphs 9 to 11 of Article 23, whereby the Commission is obliged to propose a suspension of ESI funding when certain stages in the various economic governance procedures are reached.

When the Regulation was adopted, the Commission issued the following statement:

‘The Commission confirms that it will, not later than 6 months from the entry into force of the Common Provisions Regulation, issue guidelines in the form of a Communication of the Commission explaining how it envisages that the provisions on measures linking effectiveness of ESI Funds to sound economic governance in Article 23 CPR will be applied. The guidelines will cover in particular the following elements:

- *in relation to paragraph 1, the notion of ‘review’ and the types of ‘amendments’ to Partnership Agreements and programmes that could be requested by the Commission as well as clarifying what can constitute ‘effective action’ within the meaning of paragraph 6;*
- *in relation to paragraph 6, an indication of the circumstances which may give rise to suspension of payments, including criteria which may be relevant in*

¹ These are the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

² Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94.

³ Regulation (EU) No 1303/2013 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 repealing Council Regulation (EC) No 1083/2006.

determining the programmes which could be suspended or in determining the level of suspension of payments.’⁴

This Communication follows up on the commitment given by the Commission and provides guidelines on the application of specific provisions of paragraphs 1 and 6 of Article 23 of the Regulation. Therefore, its scope is limited to the first strand. The guidelines are meant to provide further certainty on how some specific provisions of Article 23 will be implemented.

2. Context of revisions of Partnership Agreements and programmes under Article 23

In 2014, Member States are negotiating their Partnership Agreements and programmes with the Commission. These will determine the multiannual strategy for implementing the Member State’s allocation from the five ESI Funds over the seven years of the programming period (2014-20). The Commission expects to approve Partnership Agreements and most programmes in the course of 2014, in line with Articles 16 and 29 CPR.

Member States and the Commission need to focus on setting priorities right from the beginning of the period. This requires that the challenges identified in the relevant country specific recommendations (hereafter CSRs), in the relevant Council recommendations or in the context of macroeconomic adjustment programmes are adequately addressed and supported by sufficient funding levels taking into account the financial allocation to each Member State. In the negotiations, the Commission is therefore being vigilant to ensure that the new programmes are devised taking into account the existing relevant CSRs and Council recommendations for every Member State and, where appropriate, the memorandum of understanding in the case of a macroeconomic adjustment programme.

Reprogramming under Article 23 is only possible as of 2015 and until 2019. This should only be used in cases where it could have a higher impact than the existing allocation of the funds in the implementation of the relevant CSRs, relevant Council recommendations or in the economic adjustment programmes. ESI funds typically support multiannual investment strategies that require a certain degree of certainty and permanence. Frequent reprogramming should be avoided as it would disrupt fund management predictability and could undermine the credibility of adopted Partnership Agreements and programmes. In addition, while CSRs are updated annually, the underlying challenges of Member States are of long-term nature and do not considerably change from one year to another. This is why the reprogramming powers granted to the Commission will be used carefully and why stability should be preferred over too frequent reprogramming.

According to Article 23(1), reprogramming can be requested by the Commission:

- to support the implementation of CSRs⁵ (including those linked to the preventive arm of the macroeconomic imbalance procedure) and Council recommendations on the condition that these are relevant in the context of ESI funds;

⁴ See OJ 2013/C 375/02.

⁵ CSRs adopted in accordance with Article 121(2) and 148(4) of the Treaty on the Functioning of the European Union.

- to support the implementation of relevant Council recommendations addressed to a Member State in the context of the corrective arm of the macroeconomic imbalance procedure⁶, provided that reprogramming is deemed necessary to help correct macroeconomic imbalances; and
- to maximise the growth and competitiveness impact of ESI funds in Member States benefiting from financial assistance under the European Financial Stabilisation Mechanism⁷, the Balance of Payments mechanism⁸, the European Financial Stability Facility or the European Stability Mechanism⁹. In the last two cases, financial assistance must be accompanied by a macroeconomic adjustment programme.

A reprogramming request can be made within individual ESI funds, or across Structural Funds (i.e. ERDF and ESF). However, in both cases there are important legal limitations to the amounts that can be subject to a reprogramming exercise.

First, reprogramming cannot affect the annual ceilings set by the multiannual financial framework or annual instalments of the programmes' allocations committed in the years preceding the one of adoption of reprogramming. Second, transfers across ESI funds can only be made between the ERDF and ESF and must respect the ESF minimum share (Article 92(4) CPR). Third, any reprogramming between and within funds will have to respect the thematic concentration requirements shares set for the various ESI funds. Reprogramming should also take into account the ambition to devote at least 20% of the budget of the Union to climate change objectives. Fourth, any transfer of resources within or across Structural Funds must respect the financial allocation per category of region. Finally, Article 23 does not apply to the programmes under the European Territorial Cooperation goal.

3. Review and types of amendments to Partnership Agreements and programmes under Article 23

The regulation does not set a deadline for the Commission to make a reprogramming request. In cases where a reprogramming request is triggered in the context of the European Semester, it will be as soon as possible after the adoption of the relevant CSRs by the Council and, in any case, no later than four months after the Council's adoption. This will be compatible with the indicated reprogramming deadlines and avoid interference with the subsequent round of CSRs. In case of reprogramming requests to address Council recommendations in the context of excessive macroeconomic imbalances, the Commission will consider similar deadlines. As for the reprogramming requests adopted to maximise the growth and competitiveness impact of macroeconomic adjustment programmes, the Commission will adopt them as soon as possible after the signature of the memorandum of understanding or the supplemental memorandum of understanding as relevant.

⁶ Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ L 306, 23.11.2011, p. 25).

⁷ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

⁸ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

⁹ Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.05.2013, p. 1).

The Commission's reprogramming request will be duly motivated. It will make reference to the relevant CSR or relevant Council recommendation (or measure of the memorandum of understanding in the case of Member States subject to a macroeconomic adjustment programme) that triggered the request and provide the reasons on which it is based. It will explain why there is a need for intervention at EU level, how EU funding can contribute to tackling the structural challenges identified and why the existing allocation of the funds is inadequate. It will also refer to the thematic objectives and priorities envisaged by the Common Provisions Regulation and by the relevant fund-specific regulations.

In any reprogramming request, the Commission will ask a Member State to review its Partnership Agreement and programmes. This will serve to respond adequately to the economic and employment challenges identified in the relevant CSR, relevant Council recommendation, or memorandum of understanding (in the case of Member States under financial assistance), in line with the substance of the reprogramming request. The content of the reprogramming request is further specified below.

The Regulation does not specify how detailed the request should be, i.e. whether it should mention the programmes and priorities that would be affected positively and negatively by the reprogramming request.

As a general rule, when the relevant CSR or relevant Council recommendation giving rise to the reprogramming request is best addressed through further concentration of ESI funds, the Commission will indicate the programmes and priorities that should be reinforced. It will leave to the discretion of the Member State those programmes and priorities that should be reduced accordingly. However, in case of no or insufficient reaction by the Member State concerned, the Commission will define the programmes and priorities that should be reduced. In addition, the Commission may indicate in its request the programmes or priorities of critical importance which should be shielded from downsizing. Moreover, the Commission may, on occasion, also indicate in its reprogramming request the programmes and priorities that should be reduced, in which case it will provide the underlying reasons.

In contrast, when the relevant CSR or relevant Council recommendation triggering the reprogramming request is best addressed through a reduced allocation of ESI funds in a specific sector, the Commission request will clearly state the programmes and priorities that should be reduced. It will leave to the discretion of the Member State those programmes and priorities that should benefit from more resources. In accordance with Article 18 CPR and fund specific rules, Member States will concentrate support on interventions bringing the greatest added value in terms of smart, sustainable and inclusive growth taking into account inter alia the relevant country-specific recommendations and the Council recommendations adopted under Articles 121 (2) and 148 (4) of the Treaty on the Functioning of the European Union.

In case the reprogramming request is triggered by a combination of the two scenarios set out above, the Commission request will state both the programmes and/or priorities which should be affected positively (and thus benefit from more resources) as well as those that should be affected negatively (and thus be reduced).

The number of programmes and priorities subject to reprogramming should generally be kept to the strict minimum.

As regards the nature of amendments, the Commission will indicate not only the programmes and priorities that should be subject to reprogramming, but also the minimum content of the amendments to be made by the Member State and the (specific) objectives to be achieved. It will also indicate the nature and examples of interventions to be supported through the additional resources resulting from the reprogramming.

In its reprogramming request, the Commission will also provide an indication of the expected financial implications. It will take into account the amounts available for reprogramming, the stage of the programming period and the capacity of the Member State to absorb reprogrammed funds.

The Member State concerned should, in light of the Commission's request, conduct an in-depth examination of its Partnership Agreement and the programmes mentioned in the request. It should assess how these could be amended in a way that would best respond to the Commission request. Once the Member State has carried out this examination, it should submit amendments to its Partnership Agreement and the relevant programmes. For the Partnership Agreement, these should include as a minimum:

- for each ESI fund concerned, a revised indicative allocation of EU support by thematic objective at national level;
- for each ESI fund concerned, a revision of the summary of main results expected by thematic objective;
- a revised list of programmes indicating by ESI fund and by year the revised indicative allocations taking account of the proposed amendments; and
- a financial table indicating by ESI Fund the revised indicative allocations for the amended programmes.

As regards the relevant programmes affected (positively and negatively) by the Commission's request, the Member State is expected to submit amendments, as a minimum, relating to:

- the strategy for the programme's contribution to the achievement of the challenges identified by the relevant CSR or relevant Council recommendation so as to reflect the expected outcome of the modified programme;
- the justification for the selection of revised thematic objectives and priorities (which includes both those that have been reinforced and those that have been downsized) and how they address the relevant structural challenges that were the source of the reprogramming request;
- a justification of the revised financial allocations;
- the description of relevant priorities, including for each of the priorities affected, amendments to the specific objectives and the description of the revised baseline, where applicable, and expected results;

- a description of the type and examples of actions to be supported under the revised priorities and their expected contribution;
- the performance framework, in particular the milestones and targets for each indicator (financial, output and result where appropriate) in every priority subject to reprogramming, while demonstrating the respect of the requirement that the output indicators and key implementation steps set out in the performance framework correspond to more than 50% of the financial allocation to the priority;
- the programme's financing plan.

The Commission will make observations within one month to the initial response provided by the Member State if necessary. After that, the Member State will submit its proposal to amend the Partnership Agreement and the relevant programmes within two months following the response. In the case the Commission considers the reply provided by the Member State to be satisfactory, it will approve the related amendments.

4. Effective action in response to a reprogramming request by the Commission

If the Member State fails to take effective action within the deadlines set by Article 23(3) and 23(4), the Commission can make a proposal to the Council to suspend part or all of the payments for the programmes or priorities concerned. The Common Provisions Regulation does not provide explicit criteria to assess effective action. The Commission will take into account various criteria for carrying out this assessment.

The first, clear-cut case of failing to take effective action is when a Member State simply fails to submit — within the deadlines provided for by the Regulation — either a preliminary response or a proposal for amendment of its Partnership Agreement and the programmes concerned. By ignoring the Commission reprogramming request, the Member State concerned places itself in a situation of failing to take effective action.

Where a Member State has submitted the necessary documents within the deadlines, the Commission, taking into account its reprogramming request, will carry out a quality check of the proposed amendments. The quality check will be based on criteria such as:

- Do the proposed amendments allocate more or less funding (depending on the case) to all the programmes and priorities indicated in the Commission request?
- Is the size of the increase/reduction of the programmes and priorities in line with the Commission's assessment in its reprogramming request?
- Are the reasons, specific objectives and expected results of these amendments sufficiently explained?
- Are the needed modifications correctly reflected in the relevant priorities of the programmes, and in the relevant sections of the Partnership Agreement?
- Are the proposed amendments consistent? Is the revised programme strategy consistent with the expected contribution to the achievement of the challenges

identified by the relevant CSR, relevant Council recommendation or memorandum of understanding that gave rise to the request?

- Has the performance framework been revised and is it consistent with the amendments proposed to the programmes and priorities?
- Are the revised programmes and priorities coherent with the current fund-specific programming needs?

Given the rather prescriptive nature of the reprogramming request and the possibility for the Member State to improve its proposal during this process, the Commission will only consider that there is effective action when the reply provided by the Member State is considered satisfactory based on the criteria outlined above.

If a Member State fails to take effective action, the Commission may propose to the Council a suspension of payments and will justify its proposal. It will explain why the amendments or revision in allocations proposed across programmes and priorities are not sufficient or not in line to achieve the objectives set in the relevant CSR, relevant Council recommendation or memorandum of understanding that gave rise to the request.

5. Circumstances that may give rise to a suspension of payments

According to Article 23(6) the Commission may propose to the Council to suspend part or all of the payments for the programmes or priorities concerned where the Member State fails to take effective action. The Regulation does not specify in which cases the Commission should make a proposal to suspend. This section explains in which cases the Commission would consider a suspension. Nevertheless, exceptional circumstances of a Member State such as contraction of its real GDP for two or more consecutive years preceding the reprogramming request may be considered, where relevant.

The Commission would consider proposing suspension in the case of ‘no action’, i.e. if the Member State fails to provide any preliminary response to the Commission request or any proposal to amend its Partnership Agreement and programmes within the deadlines provided for by the Regulation. The Commission would not consider proposing suspension where the Member State submits its preliminary response within the deadline set out in Article 23(3), but the Commission assesses that this response fails to address the reprogramming request. The Member State still has the opportunity to substantially improve the quality of its response, based in particular on the observations that the Commission shall make, if necessary, within one month of receipt of the preliminary response. In such case, the Commission will only consider the possibility to propose a suspension after undertaking a quality check of the formal amendment to the Partnership Agreement and programmes (Article 23(4)) submitted within the deadline provided for by the Regulation. Where the Commission finds that the proposal fails to address its reprogramming request, or the proposed changes are not correctly reflected in the Partnership Agreement and programmes, or they are not ambitious enough, it may consider a suspension of payments within the three-month period specified by Article 23 (6).

6. Criteria for determining the programmes to be suspended and the level of suspension

A suspension under the first strand of measures (Article 23(6) and 23(7) CPR) is not automatic and just concerns payments. The immediate effect is a halt in cash flows to the Member State.

When proposing to the Council a suspension of payments, the Commission will indicate the programmes or priorities concerned and the amounts involved. Article 23(7) establishes the power of the Council by setting a ceiling for the suspension at 50% of the payments of each of the programmes concerned. Article 23(7) provides that the level of the suspension may be increased up to 100% if the Member State persists in failing to take effective action within three months of the Council decision to suspend.

In addition to the ceiling expressed as 50% of the payments, Article 23(7) also provides that the size of the suspension *'shall be proportionate and effective, and respect equality of treatment between Member States, in particular with regard to the impact of the suspension on the economy of the Member State concerned'*.

The Commission considers that proportionality and effectiveness mean that the suspension will be set at the amount necessary to provide the right incentives to the Member State to comply with the Commission request, taking also into account the size of the deviation between the latter and the proposal of the Member State. This will be assessed on a case-by-case basis.

The size of the suspension as a share of national GDP will be taken into account to ensure equality of treatment across Member States. This would prevent the biggest beneficiaries of ESI funds from bearing undue impacts compared with more developed Member States that receive less ESI funding in relation to their population and the size of their economies.

The economic and social circumstances of Member States will be taken into account by considering mitigating factors similar to those envisaged in the suspensions under Article 23(9). These factors reduce suspension by a certain coefficient as stated in Annex III CPR based on the unemployment rate, the proportion of people at risk of poverty or social exclusion, or the contraction of GDP in the Member State concerned.

In its proposal for suspension, the Commission will indicate the programmes or priorities concerned. As a general rule, the Commission will propose to apply the suspension to the programmes or priorities that should be reduced to enable further concentration on more crucial programmes or priorities. The programmes to be reduced will, depending on the case, be defined either by the Commission in its reprogramming request or through observations addressed under Article 23(3), or by the Member State in its initial response or its proposal for amendment to the Partnership Agreements and programmes.

In cases where programmes or priorities were singled out in the reprogramming request as needing to be increased, these should not be affected by the suspension as these are considered critical at the point in time when suspension is to be applied. This is also consistent with the provisions of Annex III CPR according to which a suspension of commitments under the second strand should not affect programmes or priorities whose resources are to be increased as a result of a reprogramming request under the first strand.

No specific timing is laid down for the Commission to adopt the proposal lifting the suspension of payments after the Member State has taken effective action in accordance with Article 23(8). In any case, the Commission will adopt the proposal immediately after the approval of the revised Partnership Agreement and programmes.

CONCLUSION

The close linkage between the ESI funds and the economic governance of the EU ensures that the effectiveness of EU expenditure is underpinned by sound economic policies. EU support can, if necessary, be redirected to address new emerging economic and social challenges.

In 2014, the priority in the Partnership Agreements and programmes will be to adequately address the challenges identified in the relevant country-specific recommendations and relevant Council recommendations to ensure full alignment with economic governance procedures from the start. This will also limit possible reprogramming under Article 23 in the short term. Given that the ESI funds support medium-term investment strategies, the Commission will use its reprogramming powers as of 2015 with caution. A reprogramming request will only be launched when a review of the Partnership Agreement and programmes can have a better impact to address the structural challenges identified by the relevant Council recommendations under macroeconomic adjustment programmes.

The Commission will duly justify any reprogramming request and provide sufficient details regarding the programmes and priorities to be reinforced or downsized according to the specific case, including an indication of the expected financial implications. This is in order to address the structural challenges identified in relevant CSR, relevant Council recommendation or measures under a macroeconomic adjustment programme.

The action undertaken by the Member State will be assessed on the basis of objective criteria. In case of failure to take effective action, the Commission will explain in detail why amendments proposed by the Member State are considered to be insufficient. Any suspension will take account of mitigating factors. The Commission will not propose any suspension of those programmes or priorities that are to be increased as a result of a reprogramming or considered to be of critical importance.