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THE EUROPEAN UNION**

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**"I/A" ITEM NOTE**

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**From:** General Secretariat of the Council

**To:** Permanent Representatives Committee/Council

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**Subject:** Proposal for a Regulation 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 and repealing Council Regulation (EC) No 1083/2006 (**first reading**)

- Adoption of the legislative act (**LA + S**)

= Statements

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### **Statement by the Commission on Article 123 paragraph 5**

The purpose of this Article is to ensure that there are guarantees of the real independence of audit authorities where the size of the operational programme means that the risk is higher, without putting in question the organisational arrangements of those audit authorities for which the experience of the 2007-2013 programming period demonstrates their effective independence and reliability.

The Commission will actively seek to apply the provisions of Article 73(3) of Council Regulation (EC) N° 1083/2006 and of Article 73(3) of Council Regulation N° 1198/2006 so that in the cases where it is able to conclude that the criteria are fulfilled, it will be able to inform the Member State as soon as possible, and before the end of 2013, that it can rely principally on the opinion of the audit authority.

### **Statement by the Commission on Article 22**

1. The Commission considers that the principal purpose of the performance framework is to stimulate effective delivery of programmes to attain the planned results and that the measures in paragraphs 6 and 7 should be applied with due regard for that purpose.
2. Where the Commission has suspended all or part of interim payments for a priority under paragraph 6, the Member State may continue to submit requests for payment in relation to the priority in order to avoid decommitment for the programme under Article 86.
3. The Commission confirms that it will apply the provisions of Article 22 (7) so that there will be no double loss of funds in relation to underachievement of targets linked to under-absorption of funds under a priority. Where part of commitments to a programme have been decommitted as a result of the application of Articles 86 to 88 with a consequent reduction in the amount of support for the priority, or where at the end of the programming period there is underspending of the amount allocated to the priority, the relevant targets set out in the performance framework shall be adjusted pro-rata for the purpose of the application of Article 22 (7).

### **Statement of the Commission in relation to compromise text on indicators**

The Commission confirms that it will complete its guidance documents on the common indicators for ERDF, ESF, Cohesion Fund and European Territorial Cooperation in consultation with the respective evaluation networks comprising national evaluation experts within 3 months of the adoption of the Regulations. These guidance documents will include definitions of each common indicator and methodologies for gathering and reporting data on the common indicators.

### **Joint Statement by the Council and the Commission on Article 145(7)**

The Council and the Commission confirm that for the purpose of Article 145(7) CPR the reference to the term "applicable law" in relation to the assessment of serious deficiencies in the effective functioning of management and control systems includes interpretations of this law made by the Court of Justice of the European Union, by the General Court of the European Union or by the Commission applicable at the date when the relevant management declarations, annual control reports and audit opinions were submitted to the Commission.

### **Statement by the Commission on the phasing of operations under Cohesion Policy operational programmes of the 2007-2013 programming period in the 2014-2020 programming period**

As a general principle, Member States have to ensure that all operations are functioning, meaning completed and in use, by the time of submission of the closure documents in order to declare the related expenditure as eligible. It is recalled that each operation should be selected and implemented in order to contribute to the achievement of the objectives of a particular programme and priority axis.

Member States are responsible for defining each operation, including its scope, objectives and outputs. This provides Member States with the flexibility necessary to select for support operations which will be functioning by the end of a programming period.

Exceptionally and in duly justified circumstances, the Member States may need to adjust a selected operation which cannot be completed by the end of the period by phasing its implementation over two programming periods. The Commission confirms that this flexibility exists subject to the conditions laid down for the purposes of programme closure (guidelines on the closure of operational programmes adopted for assistance from the European Regional Development Fund, the European Social Fund and the Cohesion Fund (2007-2013)). In such a case the two phases constitute separate operations each of which will be implemented under the rules applicable for the respective programming periods, although the overall objective to be achieved after implementation of both phases in order to ensure the functioning of the operation should be set out for each phase. In addition the Commission may approve the phasing of major projects where the implementation period is expected to be longer than the programming period either in the decision approving a major project or in a subsequent amendment thereto.

#### **Statement of the Commission in relation to Article 127 on non-statistical sampling**

The Commission notes that in relation to the issue of non-statistical sampling, Article 127(1) provides that such a sample must cover at least 5 % of operations for which expenditure has been declared to the Commission during an accounting year and 10 % of expenditure which has been declared to the Commission during an accounting year. It further notes that guidance issued by the Commission on sampling methods for audit authorities for the 2007-2013 programming period indicates that the sample size in the case of non-statistical sampling should generally be not less than 10 % of the population of operations. The Commission considers that the possibility of reduction in the size of the sample of operations to 5 % presents a risk that the sample will be insufficiently representative and will therefore have the effect of weakening the audit assurance.

### **Statement by the Commission on flat rates**

The Commission takes note of Member States' strong wish that flat rate revenue percentages for the sectors or subsectors within the fields of ICT, research, development and innovation, and energy efficiency are established as soon as possible pursuant to Article 61 of the common Provisions Regulation. The establishment of flat rates requires reliable and representative historic data in order to ensure a solid basis for the flat rate and to minimise the risks of over-financing. Consequently, the Commission will prepare the tender process for the launch of a study to collect and analyse the necessary data throughout the EU without waiting for the adoption of the legislative package, and will plan and manage the study, and draw the conclusions from its results so as to be able to adopt a delegated act setting out the flat rates for these sectors or subsectors at the earliest possible date and by 30 June 2015 at the latest.

### **Statement by the European Commission on Article 23**

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

**Statement by the Commission on the amendment of Partnership agreements and programmes in the context of Article 23**

The Commission considers that, notwithstanding the provisions of Article 23 (4) and (5), it may when necessary make observations on proposals for the amendment of Partnership Agreements and programmes submitted by Member States pursuant to Article 23 (4), in particular where these are not consistent with the prior response submitted by those Member States pursuant to Article 23 (3), and in any event on the basis of Articles 16 and 30. It considers that the deadline of three months for the adoption of the decision approving the amendments to the Partnership Agreement and the relevant programmes set out in Article 23 (5) runs from the submission of the proposals for amendments pursuant to paragraph 4 provided that these take adequately account of any observations made by the Commission.

**Statement by the Commission on the impact of the agreement reached by the co-legislators on the performance reserve and pre-financing levels on the payment ceilings**

The Commission considers that the additional payment appropriations, which may be required in 2014 -2020, as a result of the changes introduced for the performance reserve and pre financing, remain limited.

The consequences should be manageable respecting the draft MFF Regulation.

The annual fluctuations in the global level of payments, including those generated by the changes referred to, will be managed through the use of the global margin for payments and the special instruments agreed upon in the draft MFF Regulation.

The Commission will monitor the situation closely and present its evaluation as part of the mid-term review.

## **Statement of the European Parliament on the application of Article 5**

The European Parliament takes note of the information transmitted on 19 December 2012 by the Presidency following COREPER debates through which the Member States stated their intention to take into account in the preparatory stage of programming as far as possible the principles of the draft Regulation laying down common provisions for the European Structural and Investment Funds as the draft Regulation stood at the time of that transmission of information concerning the strategic programming bloc including the spirit and the content of the principle of partnership as laid down in Article 5.