



Brussels, 24 May 2019
(OR. en)

9590/19

Interinstitutional File:
2018/0196(COD)

FSTR 68
REGIO 101
FC 39
SOC 384
PECHE 253
CADREFIN 246
JAI 568
SAN 267
CODEC 1138

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Cohesion Policy - Common Provisions Regulation (Block 7) - Partial mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 29 May 2018 the Commission adopted the proposal for the Common Provisions Regulation (CPR)¹. The Common Provisions Regulation sets out common provisions for seven shared management funds: the Cohesion Fund, the European Maritime and Fisheries Funds, the European Regional Development Fund, the European Social Fund Plus, the Asylum and Migration Fund, the Border Management and Visa Instrument and the Internal Security Fund.
2. The Economic and Social Committee and the Committee of the Regions have been consulted on the CPR Regulation and have adopted their opinions on 17 October and 5 December 2018, respectively.

¹ Doc. 9511/18 + ADD 1.

3. The European Parliament voted its first reading position on the Common Provisions Regulation on 27 March 2019.

II. WORK WITHIN THE COUNCIL SO FAR

a) *CPR mandates agreed so far (Blocks 1 to 6)*

4. The CPR Regulation was presented to the Structural Measures Working Party in June 2018 during the Bulgarian Presidency. Detailed examination of the texts took place during the Austrian Presidency, as stated in their Presidency's Report (doc. 15428/1/18 REV).
5. On 17 December, under the Austrian Presidency, the Permanent Representatives Committee agreed on a mandate for negotiations on the Common Provisions Regulation covering provisions on programming and strategic planning (Block 1) and management and control (Block 5) as set out in doc. 15429/18 ADD1.
6. On 15 February, under the Romanian Presidency, the Permanent Representatives Committee agreed on a mandate for negotiations on the Common Provisions Regulation covering conditions for eligibility and performance framework (Block 2), as set out in doc. 6147/19 ADD1.
7. On 3 April, under the Romanian Presidency, the Permanent Representatives Committee agreed on a mandate for negotiations on the Common Provisions Regulation covering the provisions on monitoring, evaluation, communication and visibility (Block 3) and on financial support from the Funds (Block 4) and their related annexes, as set out in doc. 7983/19.
8. On 17 April, under the Romanian Presidency, the Permanent Representatives Committee agreed on a mandate for negotiations on the Common Provisions Regulation covering the provisions on financial management (Block 6) and their related annexes, as set out in doc. 8728/19.

b) Work on CPR Block 7

9. The Structural Measures Working Party has been examining the remaining provisions of the Common Provisions Regulation. Particular emphasis was put on the provisions on definitions and other provisions such as delegation of power, implementing, transitional and final provisions (Block 7).
10. Substantial progress has been made since the detailed examination of CPR Block 7 began at working party level. Following the Structural Measures Working Party on 22 May, **the Presidency is of the view that, based on the principle that "nothing is agreed until everything is agreed", a balanced compromise text has emerged from discussions amongst Member States.**

III. WAY FORWARD

11. The Permanent Representatives Committee is, therefore, invited to agree on a partial mandate for negotiations and confirm the compromise proposed by the Presidency on Block 7 of the Common Provisions Regulation as set out in the Annex to this note.

Common Provisions Regulation (Block 7)**TABLE OF CONTENTS**

TITLE I	OBJECTIVES AND GENERAL RULES ON SUPPORT
CHAPTER I	SUBJECT-MATTER AND DEFINITIONS
Article 1	Subject-matter and scope
Article 2	Definitions
Article 3	Calculation of time limits for Commission actions
[...]	
TITLE IX	DELEGATION OF POWER, IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS
CHAPTER I	DELEGATION OF POWER AND IMPLEMENTING PROVISIONS
Article 107	Delegation of powers
Article 108	Exercise of the delegation
Article 109	Committee procedure
CHAPTER II	TRANSITIONAL AND FINAL PROVISIONS
Article 109a	Review
Article 110	Transitional provisions
Article 111	Conditions for operations subject to phased implementation
Article 112	Entry into force

TITLE I
OBJECTIVES AND GENERAL RULES ON SUPPORT

CHAPTER I
Subject-matter and definitions

Article 1
Subject-matter and scope

1. This Regulation lays down:
 - (a) financial rules for the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the European Maritime and Fisheries Fund ('EMFF')², the Asylum and Migration Fund ('AMIF')³, the Internal Security Fund ('ISF') and the Border Management and Visa Instrument ('BMVI') ('the Funds');
 - (b) common provisions applicable to the ERDF, the ESF+, the Cohesion Fund and the EMFF.
2. This Regulation shall not apply to the Employment and Social Innovation and the Health strands of the ESF+ and to the direct or indirect management components of the EMFF, the AMIF, the ISF and the BMVI, except for technical assistance at the initiative of the Commission.
3. Articles 4 and 10, Chapter III of Title II, Chapter II of Title III, and Title VIII shall not apply to the AMIF, the ISF and the BMVI.
4. Title VIII shall not apply to the EMFF.

² Name to be aligned after Council position in Fund-specific Regulation is finalised.

³ Name to be aligned after Council position in Fund-specific Regulation is finalised.

5. Article 11 of Chapter II and Article 15 of Chapter III of Title II, Chapter I of Title III, Article 32 of Chapter III of Title III, Articles 33 to 37 and Article 38(1) to (4) of Chapter I, Article 39 of Chapter II, Article 45 of Chapter III of Title IV, Article 50(1) of Chapter II of Title V, Articles 67, 71, 73 and 74 of Chapter II and Chapter III of Title VI shall not apply to Interreg programmes.
6. The Fund-specific Regulations listed below may establish complementary rules to this Regulation which shall not be in contradiction with this Regulation. In case of doubt about the application between this Regulation and Fund-specific Regulations, this Regulation shall prevail:
- (a) Regulation (EU) [...] (the 'ERDF and CF Regulation')⁴;
 - (b) Regulation (EU) [...] (the 'ESF+ Regulation')⁵;
 - (c) Regulation (EU) [...] (the 'ETC Regulation')⁶;
 - (d) Regulation (EU) [...] (the 'EMFF Regulation')⁷;
 - (e) Regulation (EU) [...] (the 'AMIF Regulation')⁸;
 - (f) Regulation (EU) [...] (the 'ISF Regulation')⁹;
 - (g) Regulation (EU) [...] (the 'BMVI Regulation')¹⁰.

⁴ OJ L , , p. .

⁵ OJ L , , p. .

⁶ OJ L , , p. .

⁷ OJ L , , p. .

⁸ OJ L , , p. .

⁹ OJ L , , p. .

¹⁰ OJ L , , p. .

Article 2
Definitions

For the purpose of this Regulation, the following definitions apply:

- (1) 'relevant country specific recommendations' mean
 - (a) Council recommendations adopted in accordance with Article 121(2) and Article 148(4) of the TFEU relating to structural challenges, and,
 - (b) complementary Commission recommendations issued in accordance with Article 34 of Regulation (EU) 2018/1999¹¹,

which are appropriate to be addressed through multiannual investments that fall directly within the scope of the Funds as set out in Fund-specific Regulations;
- (2) 'applicable law' means Union law and the national law relating to its application;
- (3) 'operation' means:
 - (a) a project, contract, action or group of projects selected under the programmes concerned;
 - (b) in the context of financial instruments, a programme contribution to a financial instrument and the subsequent financial support provided to final recipients by that financial instrument;
- (4) 'operation of strategic importance' means an operation which provides a significant contribution to the achievement of the objectives of a programme and which is subject to particular monitoring and communication measures;

¹¹ In line with Article 34(2)(b) of Regulation (EU) 2018/1999, if the Member State concerned decides not to address a recommendation or a substantial part thereof, that Member State shall provide its reasoning.

(5) 'priority' in the context of the AMIF, the ISF and the BMVI, means a specific objective¹²;

(point 6 is deleted)

(7) 'intermediate body' means any public or private body which acts under the responsibility of a managing authority, or which carries out functions or tasks on behalf of such an authority;

(8) 'beneficiary' means:

- (a) a public or private body, an entity with or without legal personality or a natural person, responsible for initiating or both initiating and implementing operations; in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 or (EU) No 717/2014, the body granting the aid, where it is responsible for initiating or for initiating and implementing the operation;
- (b) in the context of public-private partnerships ('PPP'), the public body initiating a PPP operation or the private partner selected for its implementation;
- (c) in the context of State aid schemes, the undertaking which receives the aid, except where State aid per undertaking is less than EUR 200 000, the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid;
- (d) in the context of financial instruments, the body that implements the holding fund or, where there is no holding fund structure, the body that implements the specific fund or, where the managing authority manages the financial instrument, the managing authority;

¹² The text was aligned with the latest RO PCY compromise on EMFF. The use of terms "specific objective and "areas of support" will be aligned throughout the text with the finally agreed nomenclature for EMFF.

- (9) 'small project fund' means an operation in an Interreg programme aimed at the selection and implementation of projects of limited financial volume;
- (10) 'target' means a pre-agreed value to be achieved at the end of the eligibility period in relation to an indicator included under a specific objective;
- (11) 'milestone' means an intermediate value to be achieved at a given point in time during the eligibility period in relation to an output indicator included under a specific objective;
- (12) 'output indicator' means an indicator to measure the specific deliverables of the intervention;
- (13) 'result indicator' means an indicator to measure the effects of the interventions supported, with particular reference to the direct addressees, population targeted or users of infrastructure;
- (14) 'PPP operation' means an operation which is implemented under a partnership between public bodies and the private sector in line with a PPP agreement, and which aims to provide public services through risk sharing by the pooling of either private sector expertise or additional sources of capital or both;
- (15) 'financial instrument' means a form of support delivered via a structure through which financial products are provided to final recipients;
- (16) 'financial product' means equity or quasi equity investments, loans and guarantees as defined in Article 2 of Regulation (EU, Euratom) [...] ('the Financial Regulation');
- (17) 'final recipient' means a legal or natural person receiving support from the Funds through a beneficiary of a small project fund or from a financial instrument;
- (18) 'programme contribution' means the support from the Funds and the national public and private, if any, co-financing, to a financial instrument;

- (19) 'body implementing a financial instrument' means a body, governed by public or private law, carrying out tasks of a holding fund or of a specific fund;
- (20) 'holding fund' means a fund set up under the responsibility of a managing authority under one or more programmes, to implement one or more specific funds;
- (21) 'specific fund' means a fund, through which a managing authority or a holding fund provides financial products to final recipients;
- (22) 'leverage effect' means the amount of reimbursable financing provided to final recipients divided by the amount of the contribution from the Funds;
- (23) 'multiplier ratio' in the context of guarantee instruments, means a ratio established on the basis of a prudent ex ante risk assessment for the respective guarantee product to be offered, between the value of the underlying disbursed new loans, equity or quasi-equity investments, and the amount of the programme contribution set aside for guarantee contracts to cover expected and unexpected losses from those new loans, equity or quasi-equity investments;
- (24) 'management costs' means direct or indirect costs reimbursed against evidence of expenditure incurred in the implementation of financial instruments;
- (25) 'management fees' means a price for services rendered in the context of the implementation of financial instruments;
- (26) 'relocation' means a transfer of the same or similar activity or part thereof within the meaning of Article 2(61a)¹³ of Commission Regulation (EU) No 651/2014¹⁴;

¹³ Note for the translators: Article 2(61a) is referred as Article 2(61bis) in the ES version.

¹⁴ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

- (27) 'public contribution' means any contribution to the financing of operations the source of which is the budget of national, regional or local public authorities or of any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council ¹⁵, the budget of the Union made available to the Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies and, for the purpose of determining the co-financing rate for ESF+ programmes or priorities, may include any financial resources collectively contributed by employers and workers;
- (28) 'accounting year' means the period from 1 July to 30 June of the following year, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2022; for the final accounting year, it means the period from [1 July 2029 to 30 June 2030];
- (29) 'irregularity' means any breach of applicable law, resulting from an act or omission by a economic operator involved in the implementation of the Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditure to that budget;
- (30) 'serious deficiency' means a deficiency in the effective functioning of the management and control system of a programme for which significant improvements in the management and control systems are required and where any of the key requirements 2, 4, 5, 9, 12, 13 and 15 referred to in Annex X, or two or more of the other key requirements are assessed into categories 3 and 4 of that Annex;
- (31) 'total error rate' means the sum of the projected random errors and, if applicable, systemic errors and uncorrected anomalous errors, divided by the audit population;

¹⁵ Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ L 210, 31.7.2006, p. 19).

- (32) 'residual error rate' means the sum of the projected random errors and, if applicable, delimited systemic errors and uncorrected anomalous errors identified by the audit authority, less the financial corrections applied by the Member State to reduce the risks identified by the audit authority, divided by the audit population;
- (33) 'completed operation' means an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries;
- (34) 'sampling unit' means one of the units, which may be an operation, a project within an operation or a payment claim by a beneficiary, into which an audit population is divided for the purpose of sampling;
- (35) 'escrow account' means, in the case of a PPP operation a bank account covered by a written agreement between a public body beneficiary and the private partner approved by the managing authority or an intermediate body used for payments during and/or after the eligibility period;
- (36) 'participant' means a natural person benefiting directly from an operation without being responsible for initiating or both initiating and implementing the operation. In the context of the EMFF, a participant shall not receive financial support;
- (37) *Deleted*
- (38) 'grants under conditions' means a type of grant subject to conditions linked to the repayment of support;
- (39) 'EIB' means the European Investment Bank, the European Investment Fund or any subsidiary of the European Investment Bank;

- (40) “systemic irregularity’ means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation and the Fund-specific rules.

Article 3

Calculation of time limits for Commission actions

Where a time limit is set for an action by the Commission, that time limit shall start when all information in accordance with the requirements laid down in this Regulation or in Fund-specific Regulations have been submitted by the Member State.

That time limit shall be suspended from the day following the date on which the Commission sends its observations or a request for revised documents to the Member State and until the Member State responds to the Commission.

** A new recital on Commission audits is added:*

- (x) In order to enhance the preventive role of audit, provide legal transparency and share good practice, the Commission should be able to share audit reports at the request of Member States, with the consent of the audited Member States.

TITLE IX

DELEGATION OF POWER, IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

Delegation of power and implementing provisions

Article 107

Delegation of powers

The Commission is empowered to adopt delegated acts in accordance with Article 108 to amend the Annexes to this Regulation in order adapt to changes occurring during the programming period for non-essential elements of this Regulation, except for Annexes III, IV, X, XI, XII, XXII and XY.

Article 108

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 73(4), Article 88(4), Article 89(4) and Article 107 shall be conferred on the Commission for an indeterminate period of time from date of entry into force of this Regulation.
3. The delegation of power referred to in Article 73(4), Article 88(4), Article 89(4) and Article 107 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 73(4), Article 88(4), Article 89(4) and 107 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 109

Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

CHAPTER II

Transitional and final provisions

Article 109a

Review

The European Parliament and the Council shall review this Regulation by 31 December 2027 in accordance with Article 177 TFEU.

Article 110

Transitional provisions

1. Regulation (EC) No 1303/2013 or any other act applicable to the 2014–2020 programming period shall continue to apply only to programmes and operations supported by the ERDF, the ESF, the Cohesion Fund and the EMFF under that period.
2. Article 5 of Regulation (EU) No 1303/2013 shall apply to programmes and operations supported by the Funds under the 2021-2027 programming period as necessary for the implementation of Article 6 of this Regulation.

Article 111

Conditions for operations subject to phased implementation¹⁶

1. The managing authority may proceed with the selection of an operation consisting of the second phase of an operation selected for support and started under Regulation (EC) No 1303/2013, provided that the following cumulative conditions are met:
 - (a) the operation, as selected for support under Regulation (EC) No 1303/2013, has two phases identifiable from a financial point of view with separate audit trails;
 - (b) the total cost of the operation exceeds EUR 5 million;
 - (c) expenditure included in a payment application in relation to the first phase is not included under any payment applications in relation to the second phase;
 - (d) the second phase of the operation complies with applicable law and is eligible for support from the ERDF, the ESF+, the Cohesion Fund or the EMFF under the provisions of this Regulation or the Fund-specific Regulations;

¹⁶ *Recital 72 is amended as follows:*

(72) Since Regulation (EU) No 1303/2013 of the European Parliament and of the Council or any act applicable to the 2014–2020 programming period should continue to apply to programmes and operations supported by the Funds covered under the 2014–2020 programming period. Since the implementation period of Regulation (EU) No 1303/2013 is expected to extend over to the programming period covered by this Regulation and in order to ensure continuity of implementation of certain operations approved by that Regulation, phasing provisions should be established. Each individual phase of the phased operation, which serves the same overall objective, should be implemented in accordance with the rules of the programming period under which it receives funding, while the managing authority may proceed with selecting the second phase on the basis of the selection procedure carried out under 2014-2020 programming period for the relevant operation, provided that it satisfies itself that the conditions set out in this Regulation for phased implementation are complied with. (*p.m.: The Council position on CPR Block 5 (document ST 15429/18 ADD1) includes, in footnote 7, a revised recital (48) on the possibility for non-competitive selection procedures*).

- (e) the Member State commits to complete during the programming period and render operational the second and final phase in the final implementation report, or in the context of the EMFF in the last annual implementation report, submitted in accordance with Article 141 of Regulation (EC) No 1303/2013.

2. The provisions of this Regulation shall apply to the second phase of the operation.

Article 112

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President
