

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

## **PART TWO**

### **COMMON PROVISIONS APPLICABLE TO THE ESI FUNDS**

#### **TITLE I**

#### **PRINCIPLES OF UNION SUPPORT FOR THE ESI FUNDS**

##### *Article 4*

##### **General principles**

1 The ESI Funds shall provide support, through multi-annual programmes, which complements national, regional and local intervention, to deliver the Union strategy for smart, sustainable and inclusive growth, as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion taking account of the relevant Europe 2020 Integrated Guidelines and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU, and of the relevant Council recommendations adopted in accordance with Article 148(4) TFEU and where appropriate at national level, the National Reform Programme.

2 The Commission and the Member States shall ensure, taking account of the specific context of each Member State, that support from the ESI Funds is consistent with the relevant policies, horizontal principles referred to in Articles 5, 7 and 8 and priorities of the Union, and that it is complementary to other instruments of the Union.

3 Support from the ESI Funds shall be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.

4 Member States, at the appropriate territorial level, in accordance with their institutional, legal and financial framework, and the bodies designated by them for that purpose shall be responsible for preparing and implementing programmes and carrying out their tasks, in partnership with the relevant partners referred to in Article 5, in compliance with this Regulation and the Fund-specific rules.

5 Arrangements for the implementation and use of the ESI Funds, and in particular the financial and administrative resources required for the preparation and implementation of programmes, in relation to monitoring, reporting, evaluation, management and control, shall respect the principle of proportionality having regard to the level of support allocated and shall take into account the overall aim of reducing the administrative burden on bodies involved in the management and control of the programmes.

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6 In accordance with their respective responsibilities, the Commission and the Member States shall ensure coordination between the ESI Funds and between the ESI Funds and other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.

7 The part of the budget of the Union allocated to the ESI Funds shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 59 of the Financial Regulation, with the exception of the amount of support from the Cohesion Fund transferred to the CEF referred to in Article 92(6) of this Regulation, innovative actions at the initiative of the Commission under Article 8 of the ERDF Regulation, technical assistance at the initiative of the Commission and the support for direct management under the EMFF Regulation.

8 The Commission and the Member States shall respect the principle of sound financial management in accordance with Article 30 of the Financial Regulation.

9 The Commission and the Member States shall ensure the effectiveness of the ESI Funds during preparation and implementation, in relation to monitoring, reporting and evaluation.

10 The Commission and the Member States shall carry out their respective roles in relation to the ESI Funds with the aim of reducing the administrative burden on beneficiaries.

## Article 5

### Partnership and multi-level governance

1 For the Partnership Agreement and each programme, each Member State shall in accordance with its institutional and legal framework organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:

- a competent urban and other public authorities;
- b economic and social partners; and
- c relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination.

2 In accordance with the multi-level governance approach, the partners referred to in paragraph 1 shall be involved by Member States in the preparation of Partnership Agreements and progress reports and throughout the preparation and implementation of programmes, including through participation in the monitoring committees for programmes in accordance with Article 48.

3 The Commission shall be empowered to adopt a delegated act in accordance with Article 149 to provide for a European code of conduct on partnership (the 'code of conduct') in order to support and facilitate Member States in the organisation of partnership in accordance with paragraphs 1 and 2 of this Article. The code of conduct shall set out the framework within which the Member States, in accordance with their institutional and legal framework as well as their national and regional competences, shall pursue the implementation of partnership. The code of conduct, while fully respecting the principles of subsidiarity and proportionality, shall lay down the following elements:

- a the main principles concerning transparent procedures to be followed for the identification of the relevant partners including, where appropriate, their umbrella organisations in order to facilitate Member States in designating the most representative relevant partners, in accordance with their institutional and legal framework;

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- b the main principles and good practices concerning the involvement of the different categories of relevant partners set out in paragraph 1 in the preparation of the Partnership Agreement and programmes, the information to be provided concerning their involvement, and at the various stages of implementation;
- c the good practices concerning the formulation of the rules of membership and internal procedures of monitoring committees to be decided, as appropriate, by the Member States or the monitoring committees of programmes in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- d the main objectives and good practices in cases where the managing authority involves the relevant partners in the preparation of calls for proposals and in particular good practices for avoiding potential conflicts of interest in cases where there is a possibility of relevant partners also being potential beneficiaries, and for the involvement of the relevant partners in the preparation of progress reports and in relation to monitoring and evaluation of programmes in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- e the indicative areas, themes and good practices concerning how the competent authorities of the Member States may use the ESI Funds including technical assistance to strengthen the institutional capacity of relevant partners in accordance with the relevant provisions of this Regulation and the Fund-specific rules;
- f the role of the Commission in the dissemination of good practices;
- g the main principles and good practices that are apt to facilitate the Member States' assessment of the implementation of partnership and its added value.

The provisions of the code of conduct shall not in any way contradict the relevant provisions of this Regulation or the Fund-specific rules.

4 The Commission shall notify the delegated act, referred to in paragraph 3 of this Article, on the European code of conduct on partnership, simultaneously to the European Parliament and to the Council by 18 April 2014. That delegated act shall not specify a date of application that is earlier than the date of its adoption.

5 An infringement of any obligation imposed on Member States either by this Article or by the delegated act adopted pursuant to paragraph 3 of this Article, shall not constitute an irregularity leading to a financial correction pursuant to Article 85.

6 At least once a year, for each ESI Fund, the Commission shall consult the organisations which represent the partners at Union level on the implementation of support from that ESI Fund and shall report to the European Parliament and the Council on the outcome.

#### *Article 6*

### **Compliance with Union and national law**

Operations supported by the ESI Funds shall comply with applicable Union law and the national law relating to its application ('applicable law').

#### *Article 7*

### **Promotion of equality between men and women and non-discrimination**

The Member States and the Commission shall ensure that equality between men and women and the integration of gender perspective are taken into account and promoted

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throughout the preparation and implementation of programmes, including in relation to monitoring, reporting and evaluation.

The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.

## Article 8

### Sustainable development

The objectives of the ESI Funds shall be pursued in line with the principle of sustainable development and with the Union's promotion of the aim of preserving, protecting and improving the quality of the environment, as set out in Article 11 and Article 191(1) TFEU, taking into account the polluter pays principle.

The Member States and the Commission shall ensure that environmental protection requirements, resource efficiency, climate change mitigation and adaptation, biodiversity, disaster resilience, and risk prevention and management are promoted in the preparation and implementation of Partnership Agreements and programmes. Member States shall provide information on the support for climate change objectives using a methodology based on the categories of intervention, focus areas or measures, as appropriate, for each of the ESI Funds. That methodology shall consist of assigning a specific weighting to the support provided under the ESI Funds at a level which reflects the extent to which such support makes a contribution to climate change mitigation and adaptation goals. The specific weighting assigned shall be differentiated on the basis of whether the support makes a significant or a moderate contribution towards climate change objectives. Where the support does not contribute towards those objectives or the contribution is insignificant, a weighting of zero shall be assigned. In the case of the ERDF, the ESF and the Cohesion Fund weightings shall be attached to categories of intervention established within the nomenclature adopted by the Commission. In the case of the EAFRD weightings shall be attached to focus areas set out in the EAFRD Regulation and in the case of the EMFF to measures set out in the EMFF Regulation.

The Commission shall set out uniform conditions for each of the ESI Funds for the application of the methodology referred to in the second paragraph by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 150(3).

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## TITLE II

### STRATEGIC APPROACH

#### CHAPTER I

##### *Thematic objectives for the ESI Funds and Common Strategic Framework*

###### *Article 9*

###### **Thematic objectives**

In order to contribute to the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, each ESI Fund shall support the following thematic objectives:

- (1) strengthening research, technological development and innovation;
- (2) enhancing access to, and use and quality of, ICT;
- (3) enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF);
- (4) supporting the shift towards a low-carbon economy in all sectors;
- (5) promoting climate change adaptation, risk prevention and management;
- (6) preserving and protecting the environment and promoting resource efficiency;
- (7) promoting sustainable transport and removing bottlenecks in key network infrastructures;
- (8) promoting sustainable and quality employment and supporting labour mobility;
- (9) promoting social inclusion, combating poverty and any discrimination;
- (10) investing in education, training and vocational training for skills and lifelong learning;
- (11) enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

Thematic objectives shall be translated into priorities that are specific to each of the ESI Funds and are set out in the Fund-specific rules.

###### *Article 10*

###### **Common Strategic Framework**

1 In order to promote the harmonious, balanced and sustainable development of the Union, a Common Strategic Framework ('CSF') is hereby established, as set out in Annex I. The CSF establishes strategic guiding principles to facilitate the programming process and the sectoral and territorial coordination of Union intervention under the ESI Funds and with other relevant Union policies and instruments, in line with the targets and objectives of the Union

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strategy for smart, sustainable and inclusive growth, taking into account the key territorial challenges of the various types of territories.

2 The strategic guiding principles as set out in the CSF shall be established in line with the purpose and within the scope of the support provided by each ESI Fund, and in line with the rules governing the operation of each ESI Fund, as defined in this Regulation and the Fund-specific rules. The CSF shall not impose additional obligations upon Member States beyond those set out within the framework of the relevant sectoral Union policies.

3 The CSF shall facilitate the preparation of the Partnership Agreement and programmes in accordance with the principles of proportionality and subsidiarity and taking into account national and regional competences, in order for the specific and appropriate policy and coordination measures to be decided.

## Article 11

### Content

The CSF shall establish:

- (a) mechanisms for ensuring the contribution of the ESI Funds to the Union strategy for smart, sustainable and inclusive growth, and the coherence and consistency of the programming of the ESI Funds in relation to the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU, the relevant Council recommendations adopted in accordance with 148(4) TFEU, and where appropriate at national level, to the National Reform Programme;
- (b) arrangements to promote an integrated use of the ESI Funds;
- (c) arrangements for coordination between the ESI Funds and other relevant Union policies and instruments, including external instruments for cooperation;
- (d) horizontal principles referred to in Articles 5, 7 and 8 and cross-cutting policy objectives for the implementation of the ESI Funds;
- (e) arrangements to address the key territorial challenges for urban, rural, coastal and fisheries areas, the demographic challenges of regions or specific needs of geographical areas which suffer from severe and permanent natural or demographic handicaps as referred to in Article 174 TFEU, and the specific challenges of outermost regions within the meaning of Article 349 TFEU;
- (f) priority areas for cooperation activities under the ESI Funds, where appropriate, taking account of macro-regional and sea basin strategies.

## Article 12

### Review

Where there are major changes in the social and economic situation in the Union, or changes are made to the Union strategy for smart, sustainable and inclusive growth, the Commission may submit a proposal to review the CSF, or the European Parliament or the Council, acting in accordance with Articles 225 or 241 TFEU respectively, may request the Commission to submit such a proposal.

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The Commission shall be empowered to adopt delegated acts in accordance with Article 149 in order to supplement or amend Sections 4 and 7 of Annex I where it is necessary to take account of changes in the Union policies or instruments referred to in Section 4 or changes in the cooperation activities referred to in Section 7 or to take account of the introduction of new Union policies, instruments or cooperation activities.

### *Article 13*

#### **Guidance for beneficiaries**

1 The Commission shall prepare guidance on how to effectively access and use the ESI Funds, and on how to exploit complementarities with other instruments of relevant Union policies.

2 The guidance shall be drawn up by 30 June 2014 and shall provide, for each thematic objective, an overview of the available relevant instruments at Union level with detailed sources of information, examples of good practices for combining available funding instruments within and across policy areas, a description of relevant authorities and bodies involved in the management of each instrument, a checklist for potential beneficiaries to help them to identify the most appropriate funding sources.

3 The guidance shall be made public on the websites of the relevant Directorate Generals of the Commission. The Commission and managing authorities, acting in accordance with the Fund-specific rules, and in cooperation with the Committee of the Regions, shall ensure dissemination of the guidance to potential beneficiaries.

## *CHAPTER II*

### ***Partnership Agreement***

#### *Article 14*

#### **Preparation of the Partnership Agreement**

1 Each Member State shall prepare a Partnership Agreement for the period from 1 January 2014 to 31 December 2020.

2 The Partnership Agreement shall be drawn up by Member States in cooperation with the partners referred to in Article 5. The Partnership Agreement shall be prepared in dialogue with the Commission. The Member States shall draw up the Partnership Agreement based on procedures that are transparent for the public, and in accordance with their institutional and legal framework.

3 The Partnership Agreement shall cover all support from the ESI Funds in the Member State concerned.

4 Each Member State shall submit its Partnership Agreement to the Commission by 22 April 2014.

5 Where one or more of the Fund-specific Regulations does not enter into force or is not expected to enter into force by 22 February 2014, the Partnership Agreement submitted by a Member State as referred to in paragraph 4 shall not be required to contain the elements referred

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to in points (a)(ii), (iii), (iv) and (vi) of Article 15(1) for the ESI Fund affected by such a delay or expected delay in the entry into force of the Fund-specific Regulation.

### *Article 15*

#### **Content of the Partnership Agreement**

- 1 The Partnership Agreement shall set out:
  - a arrangements to ensure alignment with the Union strategy for smart, sustainable and inclusive growth as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion, including:
    - (i) an analysis of disparities, development needs and growth potential with reference to the thematic objectives and the territorial challenges, and taking account of the National Reform Programme, where appropriate, and relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU;
    - (ii) a summary of the ex ante evaluations of the programmes, or key findings of the ex ante evaluation of the Partnership Agreement, where the latter evaluation is undertaken by the Member State at its own initiative;
    - (iii) selected thematic objectives, and for each of the selected thematic objectives a summary of the main results expected for each of the ESI Funds;
    - (iv) the indicative allocation of support by the Union by thematic objective at national level for each of the ESI Funds, as well as the total indicative amount of support envisaged for climate change objectives;
    - (v) the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds;
    - (vi) the list of the programmes under the ERDF, the ESF and the Cohesion Fund, except those under the European territorial cooperation goal, and of the programmes of the EAFRD and the EMFF, with the respective indicative allocations by ESI Fund and by year;
    - (vii) information on the allocation related to the performance reserve, broken down by ESI Fund and, where appropriate, by category of region, and on the amounts excluded for the purpose of calculating the performance reserve in accordance with Article 20;
  - b arrangements to ensure effective implementation of the ESI Funds, including:
    - (i) arrangements, in line with the institutional framework of the Member States, that ensure coordination between the ESI Funds and other Union and national funding instruments and with the EIB;
    - (ii) the information required for ex ante verification of compliance with the rules on additionality as they are defined in Part Three;
    - (iii) a summary of the assessment of the fulfilment of applicable ex ante conditionalities in accordance with Article 19 and Annex XI at national level and, in the event that the applicable ex ante conditionalities are not



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- fulfilled, of the actions to be taken, the bodies responsible and the timetable for implementation of those actions;
- (iv) the methodology and mechanisms to ensure consistency in the functioning of the performance framework in accordance with Article 21;
  - (v) an assessment of whether there is a need to reinforce the administrative capacity of the authorities involved in the management and control of the programmes and, where appropriate, of beneficiaries as well as, where necessary, a summary of actions to be taken for that purpose;
  - (vi) a summary of the actions planned in the programmes, including an indicative timetable for achievement of a reduction in the administrative burden on beneficiaries;
- c arrangements for the partnership principle as referred in Article 5;
- d an indicative list of the partners referred to in Article 5 and a summary of the actions taken to involve them in accordance with Article 5 and of their role in the preparation of the Partnership Agreement and the progress report as referred to in Article 52.
- 2 The Partnership Agreement shall also indicate:
- a an integrated approach to territorial development supported by the ESI Funds or a summary of the integrated approaches to territorial development based on the content of the programmes, setting out:
    - (i) the arrangements to ensure an integrated approach to the use of the ESI Funds for the territorial development of specific subregional areas, in particular the implementation arrangements for Articles 32, 33 and 36 accompanied by the principles for identifying the urban areas where integrated actions for sustainable urban development are to be implemented;
    - (ii) the main priority areas for cooperation under the ESI Funds, taking account, where appropriate, of macro-regional strategies and sea basin strategies;
    - (iii) where appropriate, an integrated approach to addressing the specific needs of geographical areas most affected by poverty or of target groups at highest risk of discrimination or social exclusion, with special regard to marginalised communities, persons with disabilities, the long term unemployed and young people not in employment, education or training;
    - (iv) where appropriate, an integrated approach to address the demographic challenges of regions or specific needs of geographical areas which suffer from severe and permanent natural or demographic handicaps as referred to in Article 174 TFEU;
  - b arrangements to ensure efficient implementation of the ESI Funds, including an assessment of the existing systems for electronic data exchange, and a summary of the actions planned to gradually permit all exchanges of information between beneficiaries, and authorities responsible for management and control of programmes, to be carried out by electronic data exchange.

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## Article 16

### **Adoption and amendment of the Partnership Agreement**

1 The Commission shall assess the consistency of the Partnership Agreement with this Regulation taking account of the National Reform Programme, where appropriate, and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148 (4) TFEU, as well as of the ex ante evaluations of the programmes, and shall make observations within three months of the date of submission by the Member State of its Partnership Agreement. The Member State concerned shall provide all necessary additional information and, where appropriate, shall revise the Partnership Agreement.

2 The Commission shall adopt a decision, by means of implementing acts, approving the elements of the Partnership Agreement falling under Article 15(1) and those falling under Article 15(2) in the event that a Member State has made use of the provisions of Article 96(8), for the elements requiring a Commission decision under Article 96(10), no later than four months after the date of submission by the Member State of its Partnership Agreement, provided that any observations made by the Commission have been adequately taken into account. The Partnership Agreement shall not enter into force before 1 January 2014.

3 The Commission shall prepare a report on the outcome of the negotiations concerning the Partnership Agreements and the programmes, including an overview of the key issues, for each Member State, by 31 December 2015. That report shall be submitted to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions simultaneously.

4 Where a Member State proposes an amendment to the elements of the Partnership Agreement covered by the Commission decision as referred to in paragraph 2, the Commission shall carry out an assessment in accordance with paragraph 1 and, where appropriate, shall adopt a decision, by means of implementing acts, approving the amendment within three months of the date of submission of the proposal for amendment by the Member State.

5 Where a Member State amends elements of the Partnership Agreement not covered by the Commission decision as referred to in paragraph 2, it shall notify the Commission thereof within one month of the date of the decision to make the amendment.

## Article 17

### **Adoption of the revised Partnership Agreement in the event of delay in the entry into force of a Fund-specific Regulation**

1 Where Article 14(5) applies, each Member State shall submit to the Commission a revised Partnership Agreement that includes the elements missing from the Partnership Agreement for the ESI Fund concerned, within two months of the date of entry into force of the Fund-specific Regulation that was subject to the delay.

2 The Commission shall assess the consistency of the revised Partnership Agreement with this Regulation in accordance with Article 16(1) and shall adopt a decision, by means of implementing acts, approving the revised Partnership Agreement in accordance with Article 16(2).

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## CHAPTER III

### ***Thematic concentration, ex ante conditionalities and performance review***

#### *Article 18*

#### **Thematic concentration**

Member States shall concentrate support, in accordance with the Fund-specific rules, on interventions that bring the greatest added value in relation to the Union strategy for smart, sustainable and inclusive growth taking into account the key territorial challenges of the various types of territories in line with the CSF, the challenges identified in the National Reform Programmes, where appropriate, and relevant country-specific recommendations under Article 121(2) TFEU and the relevant Council recommendations adopted under Article 148(4) TFEU. Provisions on thematic concentration under the Fund-specific rules shall not apply to technical assistance.

#### *Article 19*

#### **Ex ante conditionalities**

1 Member States shall assess in accordance with their institutional and legal framework and in the context of the preparation of the programmes and, where appropriate, the Partnership Agreement, whether the ex ante conditionalities laid down in the respective Fund-specific rules and the general ex ante conditionalities set out in Part II of Annex XI are applicable to the specific objectives pursued within the priorities of their programmes and whether the applicable ex ante conditionalities are fulfilled.

Ex ante conditionalities shall apply only to the extent and provided that they comply with the definition laid down in point (33) of Article 2 regarding the specific objectives pursued within the priorities of the programme. The assessment of applicability shall, without prejudice to the definition laid down in point (33) of Article 2, take account of the principle of proportionality in accordance with Article 4(5) having regard to the level of support allocated, where appropriate. The assessment of fulfilment shall be limited to the criteria laid down in the Fund-specific rules and in Part II of Annex XI.

2 The Partnership Agreement shall set out a summary of the assessment of the fulfilment of applicable ex ante conditionalities at national level and for those which, pursuant to the assessment referred to in paragraph 1, are not fulfilled at the date of submission of the Partnership Agreement, the actions to be taken, the bodies responsible and the timetable for the implementation of those actions. Each programme shall identify which of the ex ante conditionalities laid down in the relevant Fund-specific rules and the general ex ante conditionalities set out in Part II of Annex XI are applicable to it and, which of them, pursuant to the assessment referred to in paragraph 1, are fulfilled at the date of submission of the Partnership Agreement and programmes. Where the applicable ex ante conditionalities are not fulfilled, the programme shall contain a description of the actions to be taken, the bodies responsible and the timetable for their implementation. Member States shall fulfil those ex ante conditionalities not later than 31 December 2016 and report on their fulfilment not later than in the annual implementation report in 2017 in accordance with Article 50(4) or the progress report in 2017 in accordance with point (c) of Article 52(2).

3 The Commission shall assess the consistency and the adequacy of the information provided by the Member State on the applicability of ex ante conditionalities and on the

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fulfilment of applicable ex ante conditionalities in the framework of its assessment of the programmes and, where appropriate, of the Partnership Agreement.

That assessment of applicability by the Commission shall, in accordance with Article 4(5), take account of the principle of proportionality having regard to the level of support allocated, where appropriate. The assessment of fulfilment by the Commission shall be limited to the criteria laid down in the Fund-specific rules and in Part II of Annex XI, and shall respect national and regional competences to decide on the specific and adequate policy measures including the content of strategies.

4 In the event of disagreement between the Commission and a Member State on the applicability of an ex ante conditionality to the specific objective of the priorities of a programme or its fulfilment, both the applicability in accordance with the definition in point (33) of Article 2 and the non-fulfilment shall be proven by the Commission.

5 The Commission may decide, when adopting a programme, to suspend all or part of interim payments to the relevant priority of that programme pending the completion of actions referred to in paragraph 2 where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the priority concerned. The failure to complete actions to fulfil an applicable ex ante conditionality which has not been fulfilled at the date of submission of the Partnership Agreement and the respective programmes, by the deadline set out in paragraph 2, shall constitute a ground for suspending interim payments by the Commission to the priorities of the programme concerned that are affected. In both cases, the scope of suspension shall be proportionate, taking into account the actions to be taken and the funds at risk.

6 Paragraph 5 shall not apply in the event of agreement between the Commission and the Member State on the non-applicability of an ex ante conditionality or on the fact that an applicable ex ante conditionality has been fulfilled, as indicated by the approval of the programme and the Partnership Agreement, or in the absence of Commission observations within 60 days of the submission of the relevant report referred to in paragraph 2.

7 The Commission shall without delay lift the suspension of interim payments for a priority where a Member State has completed actions relating to the fulfilment of ex ante conditionalities applicable to the programme concerned and which had not been fulfilled at the time of the decision of the Commission on the suspension. It shall also without delay lift the suspension where, following amendment of the programme related to the priority concerned, the ex ante conditionality concerned is no longer applicable.

8 Paragraphs 1 to 7 shall not apply to programmes under the European territorial cooperation goal.

## *Article 20*

### **Performance reserve**

6 % of the resources allocated to the ERDF, ESF and the Cohesion Fund under the Investment for Growth and Jobs goal referred to in point (a) of Article 89(2) of this Regulation, as well as to the EAFRD and to measures financed under shared management in accordance with the EMFF Regulation shall constitute a performance reserve which shall be established in the Partnership Agreement and programmes and allocated to specific priorities in accordance with Article 22 of this Regulation.

The following resources are excluded for the purpose of calculating the performance reserve:

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- (a) resources allocated to the YEI as defined in the operational programme in accordance with Article 18 of the ESF Regulation;
- (b) resources allocated to technical assistance at the initiative of the Commission;
- (c) resources transferred from the first pillar of the CAP to the EAFRD under Articles 7(2) and 14(1) of Regulation (EU) No 1307/2013;
- (d) transfers to the EAFRD in application of Articles 10b, 136 and 136b of Council Regulation (EC) No 73/2009 in respect of calendar years 2013 and 2014 respectively;
- (e) resources transferred to the CEF from the Cohesion Fund in accordance with Article 92(6) of this Regulation;
- (f) resources transferred to the Fund for European Aid for the Most Deprived in accordance with Article 92(7) of this Regulation;
- (g) resources allocated for innovative actions for sustainable urban development in accordance with Article 92(8) of this Regulation.

#### *Article 21*

#### **Performance review**

- 1 The Commission, in cooperation with the Member States, shall undertake a review of the performance of the programmes in each Member State in 2019 (the 'performance review'), with reference to the performance framework set out in the respective programmes. The method for establishing the performance framework is set out in Annex II.
- 2 The performance review shall examine the achievement of the milestones of the programmes at the level of priorities, on the basis of the information and the assessments presented in the annual implementation report submitted by the Member States in the year 2019.

#### *Article 22*

#### **Application of the performance framework**

- 1 The performance reserve shall constitute between 5 and 7 % of the allocation to each priority within a programme, with the exception of priorities dedicated to technical assistance and programmes dedicated to financial instruments in accordance with Article 39. The total amount of the performance reserve allocated by ESI Fund and category of region shall be 6 %. The amounts corresponding to the performance reserve shall be set out in the programmes broken down by priority and, where appropriate, by ESI Fund and by category of region.
- 2 On the basis of the performance review, the Commission shall within two months of the receipt of the respective annual implementation reports in the year 2019 adopt a decision, by means of implementing acts, to determine for each ESI Fund and Member State, the programmes and priorities which have achieved their milestones, setting out that information by ESI Fund and by category of region, where a priority covers more than one ESI Fund or category of region.
- 3 The performance reserve shall be allocated only to programmes and priorities which have achieved their milestones. Where priorities have achieved their milestones the amount of the performance reserve established for the priority shall be considered to be definitively allocated on the basis of the Commission decision referred to in paragraph 2.

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4 Where priorities have not achieved their milestones, the Member State shall propose the reallocation of the corresponding amount of the performance reserve to priorities set out in the Commission decision referred to in paragraph 2, and other amendments to the programme which result from the reallocation of the performance reserve, no later than three months after the adoption of the decision referred to in paragraph 2.

The Commission shall approve, in accordance with Article 30(3) and (4), the amendment of the programmes concerned. Where a Member State fails to submit the information in accordance with Article 50(5) and (6), the performance reserve for the programmes or the priorities concerned shall not be allocated to the programmes or the priorities concerned.

5 The Member State's proposal to reallocate the performance reserve shall be consistent with thematic concentration requirements and minimum allocations set out in this Regulation and the Fund-specific rules. By way of derogation, where one or more of the priorities linked to thematic concentration requirements or minimum allocations have not achieved their milestones, the Member State may propose a reallocation of the reserve, which does not comply with the aforementioned requirements and minimum allocations.

6 Where there is evidence, resulting from the performance review for a priority, that there has been a serious failure in achieving that priority's milestones relating only to the financial and output indicators and key implementation steps set out in the performance framework and that that failure is due to clearly identified implementation weaknesses, which the Commission had previously communicated pursuant to Article 50(8) following close consultations with the Member State concerned, and that Member State has failed to take the necessary corrective action to address such weaknesses, the Commission may, not earlier than five months after such communication, suspend all or part of an interim payment of a priority of a programme in accordance with the procedure laid down in the Fund-specific rules.

The Commission shall without delay lift the suspension of interim payments when the Member State has taken the necessary corrective action. Where the corrective action concerns the transfer of financial allocations to other programmes or priorities, which have achieved their milestones, the Commission shall approve, by means of an implementing act, the necessary amendment of the programmes concerned in accordance with Article 30(2). By way of derogation from Article 30(2), in such case the Commission shall decide on the amendment no later than two months after the submission of the Member State request for amendment.

7 Where the Commission, based on the examination of the final implementation report of the programme, establishes a serious failure to achieve the targets relating only to financial indicators, output indicators and key implementation steps set out in the performance framework due to clearly identified implementation weaknesses, which the Commission had previously communicated pursuant to Article 50(8) following close consultations with the Member State concerned, and the Member State has failed to take the necessary corrective action to address such weaknesses, the Commission may notwithstanding Article 85 apply financial corrections in respect of the priorities concerned in accordance with the Fund-specific rules.

When applying financial corrections, the Commission shall take into account, with due regard to the principle of proportionality, the absorption level and external factors contributing to the failure.

Financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned or because of reasons of force majeure seriously affecting implementation of the priorities concerned.

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The Commission shall be empowered to adopt delegated acts in accordance with Article 149 to establish detailed rules on criteria for determining the level of financial correction to be applied.

The Commission shall adopt implementing acts, laying down the detailed arrangements to ensure a consistent approach for determining the milestones and targets in the performance framework for each priority and for assessing the achievement of the milestones and targets. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

## CHAPTER IV

### *Measures linked to sound economic governance*

#### *Article 23*

#### **Measures linking effectiveness of ESI Funds to sound economic governance**

1 The Commission may request a Member State to review and propose amendments to its Partnership Agreement and relevant programmes, where this is necessary to support the implementation of relevant Council Recommendations or to maximise the growth and competitiveness impact of the ESI Funds in Member States receiving financial assistance.

Such a request may be made for the following purposes:

- a to support the implementation of a relevant country-specific recommendation adopted in accordance with Article 121(2) TFEU and of a relevant Council recommendation adopted in accordance with Article 148(4) TFEU, addressed to the Member State concerned;
- b to support the implementation of relevant Council Recommendations addressed to the Member State concerned and adopted in accordance with Articles 7(2) or 8(2) of Regulation (EU) No 1176/2011<sup>(1)</sup> of the European Parliament and of the Council provided that these amendments are deemed necessary to help correct the macroeconomic imbalances; or
- c to maximise the growth and competitiveness impact of the available ESI Funds, if a Member State meets one of the following conditions:
  - (i) Union financial assistance is made available to it under Council Regulation (EU) No 407/2010<sup>(2)</sup>;
  - (ii) financial assistance is made available to it in accordance with Council Regulation (EC) No 332/2002<sup>(3)</sup>;
  - (iii) financial assistance is made available to it that triggers a macroeconomic adjustment programme in accordance with Regulation (EU) No 472/2013 of the European Parliament and of the Council<sup>(4)</sup> or that triggers a decision of the Council in accordance with Article 136(1) TFEU.

[<sup>XI</sup>For the purposes of point (c) of the second subparagraph, each of those conditions shall be deemed to be satisfied where] such assistance has been made available to the Member State before or after 21 December 2013 and remains available to it.

2 A request by the Commission to a Member State in accordance with paragraph 1 shall be justified, with reference to the need to support the implementation of the relevant

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recommendations or to maximise the growth and competitiveness impact of the ESI Funds as appropriate, and shall indicate the programmes or priorities which it considers are concerned and the nature of the amendments expected. Such a request shall not be made before 2015 or after 2019, nor in relation to the same programmes in two consecutive years.

3 The Member State shall submit its response to the request referred to in paragraph 1 within two months of its receipt, setting out the amendments it considers necessary in the Partnership Agreement and programmes, the reasons for such amendments, identifying the programmes concerned and outlining the nature of the amendments proposed and their expected effects on the implementation of recommendations and on the implementation of the ESI Funds. If necessary, the Commission shall make observations within one month of the receipt of that response.

4 The Member State shall submit a proposal to amend the Partnership Agreement and the relevant programmes within two months of the date of submission of the response referred to in paragraph 3.

5 Where the Commission has not submitted observations or where the Commission is satisfied that any observations submitted have been duly taken into account, the Commission shall adopt a decision approving the amendments to the Partnership Agreement and the relevant programmes without undue delay and in any event [<sup>X1</sup>not later than three months after their submission by the Member State in accordance with paragraph 4.]

6 Where the Member State fails to take effective action in response to a request made in accordance with paragraph 1, within the deadlines set out in paragraphs 3 and 4, the Commission may, within three months following its observations under paragraph 3 or following the submission of the proposal of the Member State under paragraph 4, propose to the Council that it suspend part or all of the payments for the programmes or priorities concerned. In its proposal, the Commission shall set out the grounds for concluding that the Member State has failed to take effective action. In making its proposal, the Commission shall take account of all relevant information, and shall give due consideration to any elements arising from and opinions expressed through the structured dialogue under paragraph 15.

The Council shall decide on that proposal, by means of an implementing act. [<sup>X1</sup>That implementing act shall only apply with respect to payment applications submitted after the date of the adoption of that implementing act.]

7 The scope and level of the suspension of payments imposed in accordance with paragraph 6, 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 programmes to be suspended shall be determined on the basis of the needs identified in the request referred to in paragraphs 1 and 2.

The suspension of payments shall not exceed 50 % of the payments of each of the programmes concerned. The decision may provide for an increase in the level of the suspension up to 100 % of payments if the Member State fails to take effective action in response to a request made in accordance with paragraph 1, within three months of the decision to suspend payments referred to in paragraph 6.

8 Where the Member State has proposed amendments to the Partnership Agreement and the relevant programmes as requested by the Commission, the Council acting on a proposal from the Commission shall decide on the lifting of the suspension of payments.

9 The Commission shall make a proposal to the Council to suspend part or all of the commitments or payments for the programmes of a Member State in the following cases:



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- a where the Council decides in accordance with Article 126(8) or Article 126(11) TFEU that a Member State has not taken effective action to correct its excessive deficit;
- b where the Council adopts two successive recommendations in the same imbalance procedure, in accordance with Article 8(3) of Regulation (EU) No 1176/2011 on the grounds that a Member State has submitted an insufficient corrective action plan;
- c where the Council adopts two successive decisions in the same imbalance procedure in accordance with Article 10(4) of Regulation (EU) No 1176/2011 establishing non-compliance by a Member State on the grounds that it has not taken the recommended corrective action;
- d where the Commission concludes that a Member State has not taken measures to implement the adjustment programme referred to in Regulation (EU) No 407/2010 or Regulation (EC) No 332/2002 and as a consequence decides not to authorise the disbursement of the financial assistance granted to that Member State;
- e where the Council decides that a Member State does not comply with the macro-economic adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013, or with the measures requested by a Council decision adopted in accordance with Article 136(1) TFEU.

In making its proposal, the Commission shall respect the provisions of paragraph 11 and shall take account of all relevant information in that regard, and it shall give due consideration to any elements arising from and opinions expressed through the structured dialogue under paragraph 15.

Priority shall be given to the suspension of commitments: payments shall be suspended only when immediate action is sought and in the case of significant non-compliance. [X<sup>1</sup>The suspension of payments shall apply to payment applications submitted for the programmes concerned after the date of the decision to suspend.]

10 A proposal by the Commission referred to in paragraph 9 in relation to the suspension of commitments shall be deemed adopted by the Council unless the Council decides, by means of an implementing act, to reject such a proposal by qualified majority within one month of the submission of the Commission proposal. The suspension of commitments shall apply to the commitments from the ESI Funds for the Member State concerned from 1 January of the year following the decision to suspend.

The Council shall adopt a decision, by means of an implementing act, on a proposal by the Commission referred to in paragraph 9 in relation to the suspension of payments.

11 The scope and level of the suspension of commitments or payments to be imposed on the basis of paragraph 10, shall be proportionate, respect the equality of treatment between Member States and take into account the economic and social circumstances of the Member State concerned, in particular the level of unemployment of the Member State concerned in relation to the Union average and the impact of the suspension on the economy of the Member State concerned. The impact of suspensions on programmes of critical importance to address adverse economic or social conditions shall be a specific factor to be taken into account.

Detailed provisions for determining the scope and level of suspensions are set out in Annex III.

The suspension of commitments shall be subject to the lower of the following ceilings:

- a A maximum of 50 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-compliance with an excessive deficit procedure as referred to in point (a) of the first subparagraph of paragraph 9 and a maximum 25 % of the commitments relating to the next financial year for the ESI Funds in the first case of non-

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compliance relating to a corrective action plan under an excessive imbalances procedure as referred to in point (b) of the first subparagraph of paragraph 9 or non-compliance with the recommended corrective action pursuant to an excessive imbalances procedure as referred to in point (c) of the first subparagraph of paragraph 9.

The level of the suspension shall increase gradually up to a maximum of 100 % of the commitments relating to the next financial year for the ESI Funds in the case of an excessive deficit procedure and up to 50 % of the commitments relating to the next financial year for the ESI Funds in the case of an excessive imbalance procedure, in line with the seriousness of the non-compliance;

- b a maximum of 0,5 % of nominal GDP applying in the first case of non-compliance with an excessive deficit procedure as referred to in point (a) of the first subparagraph of paragraph 9 and a maximum of 0,25 % of nominal GDP applying in the first case of non-compliance relating to a corrective action plan under an excessive imbalances procedure as referred to in point (b) of the first subparagraph of paragraph 9 or non-compliance with recommended corrective action under an excessive imbalances procedure as referred to in point (c) of the first subparagraph of paragraph 9.

If non-compliance relating to corrective actions referred to in points (a), (b) and (c) of the first subparagraph of paragraph 9 persists, the percentage of that GDP cap shall be gradually increased up to:

- a maximum of 1 % of nominal GDP applying in the event of persistent non-compliance with an excessive deficit procedure in accordance with point (a) of the first subparagraph of paragraph 9; and
  - a maximum of 0,5 % of nominal GDP applying in the event of persistent non-compliance with an excessive imbalance procedure in accordance with point (b) or (c) of the first subparagraph of paragraph 9, in line with the seriousness of the non-compliance;
- c a maximum of 50 % of the commitments relating to the next financial year for the ESI Funds or a maximum of 0,5 % of nominal GDP in the first case of non-compliance as referred to in points (d) and (e) of the first subparagraph of paragraph 9.

In determining the level of the suspension and whether to suspend commitments or payments, the stage of the programme cycle shall be taken into account having regard in particular to the period remaining for using the funds following the re-budgeting of suspended commitments.

12 Without prejudice to de-commitment rules set out in Articles 86 to 88 the Commission shall lift the suspension of commitments, without delay, in the following cases:

- a where the excessive deficit procedure is held in abeyance in accordance with Article 9 of Council Regulation (EC) No 1467/97<sup>(6)</sup> or the Council has decided in accordance with Article 126(12) TFEU to abrogate the decision on the existence of an excessive deficit;
- b where the Council has endorsed the corrective action plan submitted by the Member State concerned in accordance with Article 8(2) of Regulation (EU) No 1176/2011 or the excessive imbalance procedure is placed in a position of abeyance in accordance with Article 10(5) of that Regulation or the Council has closed the excessive imbalance procedure in accordance with Article 11 of that Regulation;
- c where the Commission has concluded that the Member State concerned has taken adequate measures to implement the adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013 or the measures requested by a decision of the Council in accordance with Article 136(1) TFEU.

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When lifting the suspension of commitments, the Commission shall re-budget the suspended commitments in accordance with Article 8 of Council Regulation (EU, Euratom) No 1311/2013.

A decision concerning the lifting of the suspension of payments shall be taken by the Council on a proposal from the Commission where the applicable conditions set out in points (a), (b) and (c) of the first subparagraph are fulfilled.

13 Paragraphs 6 to 12 shall not apply to the United Kingdom in so far as the suspension of commitments or of payments relate to matters covered by points (a), (b) and (c)(iii) of the second subparagraph of paragraph 1 or points (a), (b) or (c) of the first subparagraph of paragraph 9.

14 This Article shall not apply to programmes under the European territorial cooperation goal.

15 The Commission shall keep the European Parliament informed of the implementation of this Article. In particular the Commission shall, when one of the conditions set out in paragraph 6 or points (a) to (e) of the first subparagraph of paragraph 9 is fulfilled for a Member State, immediately inform the European Parliament and provide details of the ESI Funds and programmes which could be subject to a suspension of commitments or payments.

The European Parliament may invite the Commission for a structured dialogue on the application of this Article, having regard in particular to the transmission of the information referred to in the first sub-paragraph.

The Commission shall transmit the proposal for suspension of commitments or payments or the proposal to lift such a suspension to the European Parliament and the Council immediately after its adoption. The European Parliament may invite the Commission to explain the reasons for its proposal.

16 In 2017, the Commission shall carry out a review of the application of this Article. To this end, the Commission shall prepare a report which it shall transmit to the European Parliament and the Council, accompanied where necessary by a legislative proposal.

17 Where there are major changes in the social and economic situation in the Union, the Commission may submit a proposal to review the application of this Article, or the European Parliament or the Council, acting in accordance with Articles 225 or 241 TFEU respectively, may request the Commission to submit such a proposal.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

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## [<sup>F1</sup>Article 24

### **Increase in payments for Member State with temporary budgetary difficulties**

1 On the request of a Member State, interim payments may be increased by 10 percentage points above the co-financing rate applicable to each priority for the ERDF, ESF and the Cohesion Fund or to each measure for the EAFRD and the EMFF.

If a Member State meets one of the following conditions after 21 December 2013, the increased rate, which may not exceed 100 %, shall apply to its payment applications for the period until 30 June 2016:

- a where the Member State concerned receives a loan from the Union under Regulation (EU) No 407/2010;
- b where the Member State concerned receives medium-term financial assistance in accordance with Regulation (EC) No 332/2002 conditional on the implementation of a macroeconomic adjustment programme;
- c where financial assistance is made available to the Member State concerned conditional on the implementation of a macroeconomic adjustment programme as specified in Regulation (EU) No 472/2013.

If a Member State meets one of the conditions set out in the second subparagraph after 30 June 2016, the increased rate shall apply to its payment applications for the period until 30 June of the year following the calendar year in which the related financial assistance comes to an end.

This paragraph shall not apply to programmes under the ETC Regulation.

2 Notwithstanding paragraph 1, Union support through interim payments and payments of the final balance shall not be higher than:

- a the public expenditure; or
- b the maximum amount of support from the ESI Funds for each priority for the ERDF, ESF and the Cohesion Fund, or for each measure for the EAFRD and the EMFF, as laid down in the decision of the Commission approving the programme,

whichever is lower.]

#### **Textual Amendments**

- F1** Substituted by [Regulation \(EU\) 2016/2135 of the European Parliament and of the Council of 23 November 2016 amending Regulation \(EU\) No 1303/2013 as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability.](#)

## Article 25

### **[<sup>F2</sup>Management of technical assistance for Member States]**

[<sup>F21</sup> On the request of a Member State pursuant to Article 11 of Regulation (EU) 2017/825 of the European Parliament and the Council<sup>(6)</sup>, a part of the resources provided for under Article 59 of this Regulation and programmed in accordance with Fund-specific rules may, in agreement with the Commission, be transferred to technical assistance at the initiative of the Commission

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for implementation of measures in relation to the Member State concerned in accordance with point (l) of the third subparagraph of Article 58(1) of this Regulation through direct or indirect management.]

2 The resources referred to in paragraph 1 shall be additional to the amounts established in accordance with the ceilings set out in the Fund-specific rules for technical assistance at the initiative of the Commission. Where a ceiling on technical assistance at the initiative of the Member State is set out in the Fund-specific rules, the amount to be transferred shall be included for the purposes of the calculation of compliance with that ceiling.

3 <sup>[F2]</sup>A Member State shall request the transfer referred to in paragraph 1 for a calendar year by 31 January of the year in which a transfer is to be made. The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments shall be made to the Partnership Agreement in accordance with Article 30(2) which shall set out the total amount transferred each year to the Commission.]

Where a Member States meets the conditions set out in Article 24(1) on 1 January 2014, it may transmit the request for that year at the same time as the submission of its Partnership Agreement, which shall set out the amount to be transferred to technical assistance at the initiative of the Commission.

<sup>[F34]</sup> Resources transferred by a Member State in accordance with paragraph 1 of this Article shall be subject to the decommitment rule set out in Article 136 of this Regulation and Article 38 of Regulation (EU) No 1306/2013.]

#### **Textual Amendments**

- F2** Substituted by Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013.
- F3** Inserted by Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013.

## TITLE III

### PROGRAMMING

#### CHAPTER I

#### *General provisions on the ESI Funds*

##### *Article 26*

#### **Preparation of programmes**

1 The ESI Funds shall be implemented through programmes in accordance with the Partnership Agreement. Each programme shall cover the period from 1 January 2014 to 31 December 2020.

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2 Programmes shall be drawn up by Member States or any authority designated by them, in cooperation with the partners referred to in Article 5. Member States shall draw up the programmes based on procedures that are transparent for the public, in accordance with their institutional and legal framework.

3 The Member States and the Commission shall cooperate to ensure effective coordination in the preparation and implementation of programmes for the ESI Funds, including, where appropriate, multi-fund programmes for the Funds, taking account of the proportionality principle.

4 Programmes shall be submitted by the Member States to the Commission within three months of the submission of the Partnership Agreement. European territorial cooperation programmes shall be submitted by 22 September 2014. All programmes shall be accompanied by the ex ante evaluation as set out in Article 55.

5 Where one or more of the Fund-specific Regulations for the ESI Funds enters into force between 22 February 2014 and 22 June 2014, the programme or programmes supported by the ESI Fund affected by the delay in the entry into force of the Fund-specific Regulation shall be submitted within three months of the submission of the revised Partnership Agreement referred to in Article 17(1).

6 Where one or more of the Fund-specific Regulations for the ESI Funds enters into force later than on 22 June 2014, the programme or programmes supported by the ESI Fund affected by the delay in the entry into force of the Fund-specific Regulation shall be submitted within three months of the date of entry into force of the Fund-specific Regulation that was subject to the delay.

## Article 27

### Content of programmes

1 Each programme shall set out a strategy for the programme's contribution to the Union strategy for smart, sustainable and inclusive growth consistent with this Regulation, the Fund-specific rules, and with the content of the Partnership Agreement.

Each programme shall include arrangements to ensure effective, efficient and coordinated implementation of the ESI Funds and actions to achieve a reduction of the administrative burden on beneficiaries.

2 Each programme shall define priorities setting out specific objectives, financial appropriations of support from the ESI Funds and corresponding national co-financing, including amounts related to the performance reserve, which may be public or private in accordance with the Fund-specific rules.

3 Where Member States and regions participate in macro-regional strategies or sea basin strategies, the relevant programme, in accordance with the needs of the programme area as identified by the Member State, shall set out the contribution of the planned interventions to those strategies.

4 Each priority shall set out indicators and corresponding targets expressed in qualitative or quantitative terms, in accordance with the Fund-specific rules, in order to assess progress in programme implementation aimed at achievement of objectives as the basis for monitoring, evaluation and review of performance. Those indicators shall include:

- a financial indicators relating to expenditure allocated;
- b output indicators relating to the operations supported;

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- c result indicators relating to the priority concerned.

For each ESI Fund, the Fund-specific rules shall set out common indicators and may set out provisions related to programme-specific indicators.

5 Each programme, except those which cover exclusively technical assistance, shall include a description, in accordance with the Fund-specific rules, of the actions to take into account the principles set out in Articles 5, 7 and 8.

6 Each programme, except those where technical assistance is undertaken under a specific programme, shall set out the indicative amount of support to be used for climate change objectives, based on the methodology referred to in Article 8.

7 Member States shall draft the programme in accordance with the Fund-specific rules.

#### *Article 28*

#### **Specific provisions on the content of programmes dedicated to joint instruments for uncapped guarantees and securitisation providing capital relief implemented by the EIB**

1 By way of derogation from Article 27, the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) shall include:

- a the elements set out under the first subparagraph of Article 27(1), and under paragraphs 2, 3 and 4 of that Article as regards the principles set out under Article 5;
- b an identification of the bodies referred to under Articles 125, 126 and 127 of this Regulation and Article 65(2) of the EAFRD Regulation as relevant for the Fund concerned;
- c for each ex ante conditionality, established in accordance with Article 19 and Annex XI, which is applicable to the programme, an assessment of whether the ex ante conditionality is fulfilled at the date of submission of the Partnership Agreement and programme, and where ex ante conditionalities are not fulfilled, a description of the actions to fulfil the ex ante conditionality, the bodies responsible and a timetable for such actions in accordance with the summary submitted in the Partnership Agreement.

2 By way of derogation from Article 55, the ex ante assessment referred to in point (a) of the first subparagraph of Article 39(4) shall be considered as the ex ante evaluation of such programmes.

3 For the purposes of programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation, Article 6(2) and Article 59(5) and (6) of the EAFRD Regulation shall not apply. In addition to the elements referred to in paragraph 1 of this Article, only the provisions set out in points (c)(i), (f), (h), (i) and (m)(i) to (iii) of Article 8(1) of the EAFRD Regulation shall apply for programmes under the EAFRD.

#### *Article 29*

#### **Procedure for the adoption of programmes**

1 The Commission shall assess the consistency of programmes with this Regulation and with the Fund-specific rules, their effective contribution to the selected thematic objectives and to the Union priorities specific to each ESI Fund, and also the consistency with the Partnership Agreement, taking account of the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in

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accordance with Article 148(4) TFEU as well as of the ex ante evaluation. The assessment shall address, in particular, the adequacy of the programme strategy, the corresponding objectives, indicators, targets and the allocation of budgetary resources.

2 By way of derogation from paragraph 1, the Commission shall not need to assess the consistency of the dedicated operational programmes for the YEI referred to in point (a) of the second paragraph of Article 18 of the ESF Regulation and dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation with the Partnership Agreement in the absence of the submission by the Member State of its Partnership Agreement at the date of submission of such dedicated programmes.

3 The Commission shall make observations within three months of the date of submission of the programme. The Member State shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed programme.

4 In accordance with the Fund-specific rules, the Commission shall approve each programme no later than six months following its submission by the Member State concerned, provided that any observations made by the Commission have been adequately taken into account, but not before 1 January 2014 or before adoption by the Commission of a decision approving the Partnership Agreement.

By way of derogation from the requirement referred to in the first subparagraph, programmes under the European territorial cooperation goal may be approved by the Commission before the adoption of the decision approving the Partnership Agreement and dedicated operational programmes for the YEI referred to in point (a) of the second paragraph of Article 18 of the ESF Regulation and dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) of this Regulation may be approved by the Commission before the submission of the Partnership Agreement.

### *Article 30*

#### **Amendment of programmes**

1 Requests for amendment of programmes submitted by a Member State shall be duly justified and shall in particular set out the expected impact of the changes to the programme on achieving the Union strategy for smart, sustainable and inclusive growth and the specific objectives defined in the programme, taking account of this Regulation and the Fund-specific rules, the horizontal principles referred to in Articles 5, 7 and 8, as well as of the Partnership Agreement. They shall be accompanied by the revised programme.

2 The Commission shall assess the information provided in accordance with paragraph 1, taking account of the justification provided by the Member State. The Commission may make observations within one month of the submission of the revised programme and the Member State shall provide to the Commission all necessary additional information. In accordance with the Fund-specific rules, the Commission shall approve requests for amendment of a programme as soon as possible but no later than three months after their submission by the Member State provided that any observations made by the Commission have been adequately taken into account.

Where the amendment of a programme affects the information provided in the Partnership Agreement in accordance with points (a)(iii), (iv) and (vi) of Article 15(1)), the approval of the amendment of the programme by the Commission shall at the same time constitute an approval for the consequential revision of the information in the Partnership Agreement.



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3 By way of derogation from paragraph 2, where the request for amendment is submitted to the Commission in order to reallocate the performance reserve following the performance review, the Commission shall make observations only where it considers that the allocation proposed is not in compliance with applicable rules, is not consistent with the development needs of the Member State or the region, or entails a significant risk that the objectives and targets included in the proposal cannot be achieved. The Commission shall approve the request for amendment of a programme as soon as possible and no later than two months after the submission of the request by the Member State provided that any observations made by the Commission have been adequately taken into account. The approval of the amendment of the programme by the Commission shall at the same time constitute an approval for the consequential revision of the information in the Partnership Agreement.

4 By way of derogation from paragraph 2, specific procedures for the amendment of operational programmes may be established in the EMFF Regulation.

### *Article 31*

#### **Participation of the EIB**

1 The EIB may, at the request of Member States, participate in the preparation of the Partnership Agreement, as well as in activities relating to the preparation of operations, in particular major projects, financial instruments and PPPs.

2 The Commission may consult the EIB before the adoption of the Partnership Agreement or the programmes.

3 The Commission may request the EIB to examine the technical quality, economic and financial sustainability, and the viability of major projects and to assist it as regards the financial instruments to be implemented or developed.

4 The Commission, in implementing the provisions of this Regulation, may award grants or service contracts to the EIB covering initiatives implemented on a multi-annual basis. The commitment of the contributions of the budget of the Union in respect of such grants or service contracts shall be effected annually.

## *CHAPTER II*

### ***Community-led local development***

#### *Article 32*

#### **Community-led local development**

1 Community-led local development shall be supported by the EAFRD, which shall be designated as LEADER local development and may be supported by the ERDF, ESF or EMFF. For the purposes of this Chapter, those Funds are hereinafter referred to as the "ESI Funds concerned".

2 Community-led local development shall be:

- a focused on specific subregional areas;
- b led by local action groups composed of representatives of public and private local socio-economic interests, in which, at the decision-making level neither public authorities, as

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- defined in accordance with national rules, nor any single interest group represents more than 49 % of the voting rights;
- c carried out through integrated and multi-sectoral area-based local development strategies;
  - d designed taking into consideration local needs and potential, and shall include innovative features in the local context, networking and, where appropriate, cooperation.
- 3 Support from the ESI Funds concerned to community-led local development shall be consistent and coordinated between the ESI Funds concerned. This shall be ensured inter alia through coordinated capacity-building, selection, approval and funding of community-led local development strategies and local action groups.
- 4 Where the selection committee for the community-led local development strategies set up under Article 33(3) determines that the implementation of the community-led local development strategy selected requires support from more than one Fund, it may designate in accordance with national rules and procedures, a lead Fund to support all running and animation costs under points (d) and (e) of Article 35(1) for the community-led local development strategy.
- 5 Community-led local development supported by the ESI Funds concerned shall be carried out under one or more priorities of the relevant programme or programmes in accordance with Fund-specific rules of the ESI Funds concerned.

### *Article 33*

#### **Community-led local development strategies**

- 1 A community-led local development strategy shall contain at least the following elements:
- a the definition of the area and population covered by the strategy;
  - b an analysis of the development needs and potential of the area, including an analysis of strengths, weaknesses, opportunities and threats;
  - c a description of the strategy and its objectives, a description of the integrated and innovative features of the strategy and a hierarchy of objectives, including measurable targets for outputs or results. In relation to results, targets may be expressed in quantitative or qualitative terms. The strategy shall be consistent with the relevant programmes of all the ESI Funds concerned that are involved;
  - d a description of the community involvement process in the development of the strategy;
  - e an action plan demonstrating how objectives are translated into actions;
  - f a description of the management and monitoring arrangements of the strategy, demonstrating the capacity of the local action group to implement the strategy and a description of specific arrangements for evaluation;
  - g the financial plan for the strategy, including the planned allocation from each of the ESI Funds concerned.
- 2 Member States shall define criteria for the selection of community-led local development strategies.
- 3 Community-led local development strategies shall be selected by a committee set up for that purpose by the managing authority or authorities responsible and approved by the managing authority or authorities responsible.

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4 The first round of selection of community-led local development strategies shall be completed within two years of the date of the approval of the Partnership Agreement. Member States may select additional community-led local development strategies after that date but no later than 31 December 2017.

5 The decision approving a community-led local development strategy shall set out the allocations of each of the ESI Funds concerned. The decision shall also set out the responsibilities for the management and control tasks under the programme or programmes in relation to the community-led local development strategy.

6 The population of the area referred to in point (a) of paragraph 1 shall be not less than 10 000 and not more than 150 000 inhabitants. However, in duly justified cases and [X<sup>1</sup> on the basis of a proposal by a Member State, the Commission may adopt or amend those population limits in its decision under Article 16(2) or (4)] to approve or amend respectively the Partnership Agreement in the case of that Member State, in order to take account of sparsely or densely populated areas or in order to ensure the territorial coherence of areas covered by the community-led local development strategies.

#### **Editorial Information**

**X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

### *Article 34*

#### **Local action groups**

1 Local action groups shall design and implement the community-led local development strategies.

Member States shall define the respective roles of the local action group and the authorities responsible for the implementation of the relevant programmes, concerning all implementation tasks relating to the community-led local development strategy.

2 The managing authority or authorities responsible shall ensure that the local action groups either select one partner within the group as a lead partner in administrative and financial matters, or come together in a legally constituted common structure.

3 The tasks of local action groups shall include the following:

- a building the capacity of local actors to develop and implement operations including fostering their project management capabilities;
- b drawing up a non-discriminatory and transparent selection procedure and objective criteria for the selection of operations, which avoid conflicts of interest, ensure that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allow selection by written procedure;
- c ensuring coherence with the community-led local development strategy when selecting operations, by prioritising those operations according to their contribution to meeting that strategy's objectives and targets;

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- d preparing and publishing calls for proposals or an ongoing project submission procedure, including defining selection criteria;
- e receiving and assessing applications for support;
- f selecting operations and fixing the amount of support and, where relevant, presenting the proposals to the body responsible for final verification of eligibility before approval;
- g monitoring the implementation of the community-led local development strategy and the operations supported and carrying out specific evaluation activities linked to that strategy.

4 Without prejudice to point (b) of paragraph 3, the local action group may be a beneficiary and implement operations in accordance with the community-led local development strategy.

5 In the case of cooperation activities of local action groups as referred to in point (c) of Article 35(1), the tasks set out in point (f) of paragraph 3 of this Article may be carried out by the managing authority responsible.

### *Article 35*

#### **Support from the ESI Funds for community-led local development**

1 Support from the ESI Funds concerned for community-led local development shall cover:

- a the costs of preparatory support consisting of capacitybuilding, training and networking with a view to preparing and implementing a community-led local development strategy.

Such costs may include one or more of the following elements:

- (i) training actions for local stakeholders;
- (ii) studies of the area concerned;
- (iii) costs related to the design of the community-led local development strategy, including consultancy costs and costs for actions related to consultations of stakeholders for the purposes of preparing the strategy;
- (iv) administrative costs (operating and personnel costs) of an organisation that applies for preparatory support during the preparation phase;
- (v) support for small pilot projects.

Such preparatory support shall be eligible regardless of whether the community-led local development strategy designed by the local action group benefitting from the support is selected for funding by the selection committee set up under Article 33(3).

- b implementation of operations under the community-led local development strategy;
- c preparation and implementation of the local action group's cooperation activities;
- d running costs linked to the management of the implementation of the community-led local development strategy consisting of operating costs, personnel costs, training cost, costs linked to public relations, financial costs as well as the costs linked to monitoring and evaluation of that strategy as referred to in point (g) of Article 34(3);
- e animation of the community-led local development strategy in order to facilitate exchange between stakeholders to provide information and to promote the strategy and

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to support potential beneficiaries with a view to developing operations and preparing applications.

2 Support for running costs and animation as referred to in points (d) and (e) of paragraph 1 shall not exceed 25 % of the total public expenditure incurred within the community-led local development strategy.

### CHAPTER III

#### **Territorial development**

##### *Article 36*

#### **Integrated territorial investment**

1 Where an urban development strategy or other territorial strategy, or a territorial pact referred to in Article 12(1) of the ESF Regulation, requires an integrated approach involving investments from the ESF, ERDF or Cohesion Fund under more than one priority axis of one or more operational programmes, actions may be carried out as an integrated territorial investment (an 'ITI').

Actions carried out as an ITI may be complemented with financial support from the EAFRD or the EMFF.

2 Where an ITI is supported by ESF, ERDF or Cohesion Fund, the relevant operational programme or programmes shall describe the approach to the use of the ITI instrument and the indicative financial allocation from each priority axis in accordance with the Fund-specific rules.

Where an ITI is complemented with financial support from the EAFRD or the EMFF, the indicative financial allocation and the measures covered shall be set out in the relevant programme or programmes in accordance with the Fund-specific rules.

3 The Member State or the managing authority may designate one or more intermediate bodies, including local authorities, regional development bodies or non-governmental organisations, to carry out the management and implementation of an ITI in accordance with the Fund-specific rules.

4 The Member State or the relevant managing authorities shall ensure that the monitoring system for the programme or programmes provides for the identification of operations and outputs of a priority contributing to an ITI.

### TITLE IV

#### **FINANCIAL INSTRUMENTS**

##### *Article 37*

#### **Financial instruments**

1 The ESI Funds may be used to support financial instruments under one or more programmes, including when organised through funds of funds, in order to contribute to the achievement of specific objectives set out under a priority.

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Financial instruments shall be implemented to support investments which are expected to be financially viable and do not give rise to sufficient funding from market sources. When applying this Title, the managing authorities, the bodies implementing funds of funds, and the bodies implementing financial instruments shall comply with applicable law, in particular on State aid and public procurement.

2 Support of financial instruments shall be based on an ex ante assessment which has established evidence of market failures or suboptimal investment situations, and the estimated level and scope of public investment needs, including types of financial instruments to be supported. Such ex ante assessment shall include:

- a an analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology;
- b an assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion;
- c an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and level of, preferential remuneration to attract counterpart resources from private investors and/or a description of the mechanisms which will be used to establish the need for, and extent of, such preferential remuneration, such as a competitive or appropriately independent assessment process;
- d an assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future;
- e the proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate;
- f a specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;
- g provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation.

3 The ex ante assessment referred to in paragraph 2 may be performed in stages. It shall, in any event, be completed before the managing authority decides to make programme contributions to a financial instrument.

The summary findings and conclusions of ex ante assessments in relation to financial instruments shall be published within three months of their date of finalisation.

The ex ante assessment shall be submitted to the monitoring committee for information purposes in accordance with the Fund-specific rules.

4 Where financial instruments support financing to enterprises, including SMEs, such support shall target the establishment of new enterprises, early stage-capital, i.e. seed capital and

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start-up capital, expansion capital, capital for the strengthening of the general activities of an enterprise, or the realisation of new projects, penetration of new markets or new developments by existing enterprises, without prejudice to applicable Union State aid rules, and in accordance with the Fund-specific rules. Such support may include investment in both tangible and intangible assets as well as working capital within the limits of applicable Union State aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. It may also include the costs of transfer of proprietary rights in enterprises provided that such transfers take place between independent investors.

5 Investments that are to be supported through financial instruments shall not be physically completed or fully implemented at the date of the investment decision.

6 Where financial instruments provide support to final recipients in respect of infrastructure investments with the objective of supporting urban development or urban regeneration or similar infrastructure investments with the objectives of diversifying non-agricultural activities in rural areas, such support may include the amount necessary for the reorganisation of a debt portfolio regarding infrastructure forming part of the new investment, up to a maximum of 20 % of the total amount of programme support from the financial instrument to the investment.

7 Financial instruments may be combined with grants, interest rate subsidies and guarantee fee subsidies. Where support from ESI Funds is provided by means of financial instruments and combined in a single operation, with other forms of support directly related to financial instruments targeting the same final recipients, including technical support, interest rate subsidies and guarantee fee subsidies, the provisions applicable to financial instruments shall apply to all forms of support within that operation. In such cases, applicable Union State aid rules shall be respected and separate records shall be maintained for each form of support.

8 Final recipients supported by an ESI Fund financial instrument may also receive assistance from another ESI Funds priority or programme or from another instrument supported by the budget of the Union in accordance with applicable Union State aid rules. In that case, separate records shall be maintained for each source of assistance and the ESI Funds financial instrument support shall be part of an operation with eligible expenditure distinct from the other sources of assistance.

9 The combination of support provided through grants and financial instruments as referred to in paragraphs 7 and 8 may, subject to applicable Union State aid rules, cover the same expenditure item provided that the sum of all forms of support combined does not exceed the total amount of the expenditure item concerned. Grants shall not be used to reimburse support received from financial instruments. Financial instruments shall not be used to pre-finance grants.

10 Contributions in kind shall not constitute eligible expenditure in respect of financial instruments, except for contributions of land or real estate in respect of investments with the objective of supporting rural development, urban development or urban regeneration, where the land or real estate forms part of the investment. Such contributions of land or real estate shall be eligible provided that the conditions laid down in Article 69(1) are met.

11 VAT shall not constitute eligible expenditure of an operation, except in the case of VAT which is non-recoverable under national VAT legislation. The treatment of VAT at the level of investments made by final recipients shall not be taken into account for the purposes of determining the eligibility of expenditure under the financial instrument. However, where financial instruments are combined with grants under paragraphs 7 and 8 of this Article, the provisions of Article 69(3) shall apply to the grant.

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12 For the purposes of the application of this Article, the applicable Union State aid rules shall be those in force at the time when the managing authority or the body that implements the fund of funds contractually commits programme contributions to a financial instrument, or when the financial instrument contractually commits programme contributions to final recipients, as applicable.

13 The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional specific rules on the purchase of land and on combining technical support with financial instruments.

### Article 38

#### Implementation of financial instruments

1 In implementing Article 37, managing authorities may provide a financial contribution to the following financial instruments:

- a financial instruments set up at Union level, managed directly or indirectly by the Commission;
- b financial instruments set up at national, regional, transnational or cross-border level, managed by or under the responsibility of the managing authority.

2 Contributions from the ESI Funds to financial instruments under point (a) of paragraph 1 shall be placed in separate accounts and used, in accordance with the objectives of the respective ESI Funds, to support actions and final recipients consistent with the programme or programmes from which such contributions are made.

Contributions to the financial instruments referred to in the first subparagraph shall be subject to this Regulation unless exceptions are expressly provided for.

The second subparagraph is without prejudice to the rules governing the set up and functioning of the financial instruments under the Financial Regulation, unless those rules conflict with the rules of this Regulation, in which case this Regulation prevails.

3 For financial instruments under point (b) of paragraph 1, the managing authority may provide a financial contribution to the following financial instruments:

- a financial instruments complying with the standard terms and conditions laid down by the Commission, in accordance with the second subparagraph of this paragraph;
- b already existing or newly created financial instruments which are specifically designed to achieve the specific objectives set out under the relevant priority.

The Commission shall adopt implementing acts concerning the standard terms and conditions with which the financial instruments under point (a) of the first subparagraph shall comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4 When supporting financial instruments referred to in point (b) of paragraph 1 the managing authority may:

- a invest in the capital of existing or newly created legal entities, including those financed from other ESI Funds, dedicated to implementing financial instruments consistent with the objectives of the respective ESI Funds, which will undertake implementation tasks; the support to such entities shall be limited to the amounts necessary to implement new investments in accordance with Article 37 and in a manner that is consistent with the objectives of this Regulation;
- b entrust implementation tasks to:



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- (i) the EIB;
  - (ii) international financial institutions in which a Member State is a shareholder, or financial institutions established in a Member State aiming at the achievement of public interest under the control of a public authority;
  - (iii) a body governed by public or private law; or
- c undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. In that case the managing authority shall be considered to be the beneficiary as defined in point (10) of Article 2.

When implementing the financial instrument, the bodies referred to in points (a),(b) and (c) of the first subparagraph shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud. Those bodies shall not be established and shall not maintain business relations with entities incorporated in territories, whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standards and shall transpose such requirements in their contracts with the selected financial intermediaries.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 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 in accordance with Article 37. The Commission shall notify those delegated acts simultaneously to the European Parliament and the Council by 22 april 2014.

[<sup>X15</sup>. The bodies referred to in points (a) and (b) of the first subparagraph of paragraph 4, when implementing funds of funds may further entrust part of the implementation to financial intermediaries provided that such bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Article 140(1),(2) and (4) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest.]

6 The bodies referred to in point (b) of the first subparagraph of paragraph 4 to which implementation tasks have been entrusted shall open fiduciary accounts in their name and on behalf of the managing authority, or set up the financial instrument as a separate block of finance within the financial institution. In the case of a separate block of finance, an accounting distinction shall be made between programme resources invested in the financial instrument and the other resources available in the financial institution. The assets held on fiduciary accounts and such separate blocks of finance shall be managed in accordance with the principle of sound financial management following appropriate prudential rules and shall have appropriate liquidity.

7 Where a financial instrument is implemented under points (a) and (b) of the first subparagraph of paragraph 4, subject to the implementation structure of the financial instrument, [<sup>X1</sup>the terms and conditions for contributions from programmes to the financial instrument shall be set out in funding agreements in accordance with Annex IV at the following levels:]

- a where applicable, between the duly mandated representatives of the managing authority and the body that implements the fund of funds; and
- b between the duly mandated representatives of the managing authority, or where applicable, the body that implements the fund of funds, and the body that implements the financial instrument.

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8 For financial instruments implemented under point (c) of the first subparagraph of paragraph 4, the terms and conditions for contributions from programmes to financial instruments shall be set out in a strategy document in accordance with Annex IV to be examined by the monitoring committee.

9 National public and private contributions, including where relevant contributions in kind as referred to in Article 37(10), may be provided at the level of the fund of funds, at the level of the financial instrument or at the level of final recipients, in accordance with the Fund-specific rules.

10 The Commission shall adopt implementing acts laying down uniform conditions regarding the detailed arrangements for the transfer and management of programme contributions managed by the bodies referred to in the first subparagraph of paragraph 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

#### **Editorial Information**

- XI** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

### *Article 39*

#### **Contribution of ERDF and EAFRD to joint uncapped guarantee and securitisation financial instruments in favour of SMEs, implemented by the EIB**

1 For the purposes of this Article, 'debt finance' means loans, leasing or guarantees.

2 Member States may use the ERDF and EAFRD to provide a financial contribution to financial instruments referred to in point (a) of Article 38(1) of this Regulation, managed indirectly by the Commission with implementation tasks entrusted to the EIB pursuant to point (c)(iii) of Article 58(1) and Article 139(4) of the Financial Regulation, in respect of the following activities:

- a uncapped guarantees providing capital relief to financial intermediaries for new portfolios of debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation;
- b securitisation, as defined in point (61) of Article 4 (1) of Regulation (EU) 575/2013 of the European Parliament and of the Council<sup>(7)</sup>, of any of the following:
  - (i) existing portfolios of debt finance to SMEs and other enterprises with less than 500 employees;
  - (ii) new portfolios of debt finance to SMEs.

The financial contribution referred to in points (a) and (b) of the first subparagraph of this paragraph shall contribute to junior and/or mezzanine tranches of portfolios mentioned therein provided that the relevant financial intermediary retains a sufficient part of the risk of the portfolios at least equal to the risk retention requirement set

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out in Directive 2013/36/EU of the European Parliament and of the Council<sup>(8)</sup> and in Regulation (EU) No 575/2013 to ensure adequate alignment of interest. In the case of securitisation under point (b) of the first subparagraph of this paragraph, the financial intermediary is obliged to originate new debt finance to eligible SMEs in accordance with Article 37(4) of this Regulation.

Each Member State intending to participate in such financial instruments shall contribute an amount which is in line with SMEs' debt financing needs in that Member State and the estimated demand for such SME debt finance, taking into account the ex ante assessment referred to in point (a) of the first subparagraph of paragraph 4 and in any case which is not higher than 7 % of the allocation from the ERDF and EAFRD to the Member State. The aggregate ERDF and EAFRD contribution by all participating Member States shall be subject to a global ceiling of EUR 8 500 000 000 (in 2011 prices).

Where it is considered by the Commission in consultation with the EIB that the aggregate minimum contribution to the instrument representing the sum of the contributions of all participating Member States is insufficient taking due account of the minimum critical mass defined in the ex ante assessment referred to in point (a) of the first subparagraph of paragraph 4, implementation of the financial instrument shall be discontinued and the contributions returned to the Member States.

Where the Member State and the EIB are not able to agree the conditions of the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 the Member State shall submit a request for amendment of the programme referred to in point (b) of the first subparagraph of paragraph 4 and reallocate the contribution to other programmes and priorities in accordance with requirements for thematic concentration.

Where the conditions for the termination of the Member State's contribution to the instrument established in the funding agreement between the Member State concerned and the EIB referred to in point (c) of the first subparagraph of paragraph 4 have been satisfied, the Member State shall submit a request for amendment of the programme referred to in point (b) of the first subparagraph of paragraph 4 and reallocate the remaining contribution to other programmes and priorities in accordance with requirements for thematic concentration.

Where the participation of a Member State is discontinued, that Member State shall submit a request for amendment of the programme. Where unused appropriations are decommitted, the decommitted appropriations shall be made available again to the Member State concerned, in order to be re-programmed for other programmes and priorities in accordance with the requirements for thematic concentration.

3 The SMEs which receive new debt finance, as a result of the new portfolio built up by the financial intermediary in the context of the financial instrument referred to in paragraph 2 shall be considered the final recipients of the contribution of the ERDF and EAFRD to the financial instrument concerned.

4 The financial contribution referred to in paragraph 2 shall comply with the following conditions:

- a by way of derogation from Article 37(2), it shall be based on one ex ante assessment at Union level carried out by the EIB and the Commission.

On the basis of available data sources on bank debt finance and SMEs, the ex ante assessment shall cover, inter alia, an analysis of the SME financing needs at Union level, SME financing conditions and needs as well as an indication of the SME financing gap in each Member State, a profile of the economic and financial situation of the SME

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- sector at Member State level, minimum critical mass of aggregate contributions, a range of estimated total loan volume generated by such contributions, and the added value;
- b it shall be provided by each participating Member State as part of a single dedicated national programme per financial contribution by ERDF and EAFRD supporting the thematic objective set out in point (3) of the first paragraph of Article 9;
  - c it shall be subject to the conditions set out in a funding agreement concluded between each participating Member State and the EIB including, inter alia:
    - (i) tasks and obligations of the EIB including remuneration;
    - (ii) minimum leverage to be achieved at clearly defined milestones within the eligibility period indicated in Article 65(2);
    - (iii) conditions for the new debt finance;
    - (iv) provisions relating to non-eligible activities and exclusion criteria;
    - (v) schedule of payments;
    - (vi) penalties in the event of non-performance by financial intermediaries;
    - (vii) selection of financial intermediaries;
    - (viii) monitoring, reporting and auditing;
    - (ix) visibility;
    - (x) the conditions for termination of the agreement.

For the purposes of implementation of the instrument, the EIB will enter into contractual arrangements with selected financial intermediaries;

- d in the event that the funding agreement referred to in point (c) is not concluded within six months of the adoption of the programme referred to in point (b), the Member State shall have the right to reallocate such contribution to other programmes and priorities in accordance with requirements for thematic concentration.

The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt an implementing act laying down the model of the funding agreement referred to in point (c) of the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 150(3).

5 A minimum leverage shall be achieved in each participating Member State at the milestones set out in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4, calculated as the ratio between the new debt finance to eligible SMEs to be originated by the financial intermediaries and the corresponding contribution of the ERDF and EAFRD from the relevant Member State to the financial instruments. Such minimum leverage may vary between participating Member States.

In the event that the financial intermediary does not achieve the minimum leverage set out in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 it shall be contractually bound to pay penalties for the benefit of the participating Member State, in accordance with the terms and conditions set out in the funding agreement.

Neither the guarantees issued nor the relevant securitisation transactions shall be affected by a failure by the financial intermediary to reach the minimum leverage set out in the funding agreement.

*Status: Point in time view as at 16/12/2017.*

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6 By way of derogation from the first subparagraph of Article 38(2), financial contributions referred to in paragraph 2 of this Article may be placed in separate accounts per Member State or, if two or more participating Member States give their consent, in a single account covering all such Member States and used in accordance with the specific objectives of the programmes from which the contributions are made.

7 By way of derogation from Article 41(1) and (2) as regards the financial contributions referred to in paragraph 2 of this Article, [<sup>X1</sup>the Member State's payment application to the Commission shall be made on the basis of 100 % of the amounts to be paid by the Member State to the EIB in accordance with the schedule defined in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 of this Article. Such payment applications shall be based on] the amounts requested by the EIB deemed necessary to cover commitments for guarantee contracts or securitisation transactions to be finalised within the three following months. Payments from Member States to the EIB shall be made without delay and in any case before commitments are entered into by the EIB.

8 At closure of the programme, the eligible expenditure shall be the total amount of programme contributions paid to the financial instrument, corresponding:

- [<sup>X1</sup>a for the activities referred to in point (a) of the first subparagraph of paragraph 2 of this Article, to the resources referred to in point (b) of the first subparagraph of Article 42(1);]
- b for the activities referred to in point (b) of the first subparagraph of paragraph 2 of this Article, to the aggregate amount of new debt finance resulting from the securitisation transactions, paid to or to the benefit of eligible SMEs within the eligibility period indicated in Article 65(2).

9 For the purpose of Articles 44 and 45, the uncalled guarantees and the amounts recovered in relation to, respectively, the uncapped guarantees and the securitisation transactions, shall be deemed to be resources paid back to the financial instruments. At the winding up of the financial instruments, the net liquidation proceeds, after deduction of costs, fees and payment of amounts due to creditors ranking senior to those contributed by the ERDF and EAFRD, shall be returned to the relevant Member States pro rata to their contributions to the financial instrument.

10 The report referred to in Article 46(1) shall include the following additional elements:

- a the total amount of ERDF and EAFRD support paid to the financial instrument in relation to uncapped guarantees or securitisation transactions, by programme and priority or measure;
- b progress in creating the new debt finance in accordance with Article 37(4), for eligible SMEs.

11 Notwithstanding Article 93(1), the resources allocated to instruments under paragraph 2 of this Article may be used for the purpose of giving rise to new SME debt finance in the entire territory of the Member State without regard to the categories of region, unless otherwise provided for in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4.

12 Article 70 shall not apply to programmes set up to implement financial instruments under this Article.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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](#)

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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 (Official Journal of the European Union L 347 of 20 December 2013).

## *Article 40*

### **Management and control of financial instruments**

1 Bodies designated in accordance with Article 124 of this Regulation for ERDF, Cohesion Fund, ESF, EMFF and with Article 65 of the EAFRD Regulation for the EAFRD shall not carry out on-the spot verifications of operations comprising financial instruments implemented under point (a) of Article 38(1). Those designated bodies shall receive regular control reports from the bodies entrusted with the implementation of those financial instruments.

2 The bodies responsible for the audit of programmes shall not carry out audits of operations comprising financial instruments implemented under point (a) of Article 38(1) and of management and control systems relating to those financial instruments. They shall receive regular control reports from the auditors designated in the agreements setting up those financial instruments.

3 The bodies responsible for the audit of programmes may conduct audits at the level of final recipients only when one or more of the following situations occur:

- a supporting documents, providing evidence of the support from the financial instrument to final recipients and of its use for the intended purposes in line with applicable law, are not available at the level of the managing authority or at the level of the bodies that implement financial instruments;
- b there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided.

4 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, concerning the management and control of financial instruments referred to in point (b) of Article 38(1), 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. The Commission shall notify those delegated acts simultaneously to the European Parliament and the Council by 22 April 2014.

5 The bodies implementing financial instruments shall be responsible for ensuring that supporting documents are available and shall not impose on final recipients record-keeping requirements that go beyond what is necessary to enable them to fulfil that responsibility.

## *Article 41*

### **[<sup>X1</sup>Payment applications including expenditure for financial instruments]**

1 As regards 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), phased applications for interim payments shall be made for programme

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contributions paid to the financial instrument during the eligibility period laid down in Article 65(2) (the 'eligibility period') in accordance with the following conditions:

- a the amount of the programme contribution paid to the financial instrument included in each application for interim payment submitted during the eligibility period shall not exceed 25 % of the total amount of programme contributions committed to the financial instrument under the relevant funding agreement, corresponding to expenditure within the meaning of points (a), (b) and (d) of Article 42(1) expected to be paid during the eligibility period. Applications for interim payment submitted after the eligibility period shall include the total amount of eligible expenditure within the meaning of Article 42;
- b each application for interim payment referred to in point (a) of this paragraph may include up to 25 % of the total amount of the national co-financing as referred to in Article 38(9) expected to be paid to the financial instrument, or at the level of final recipients for expenditure in the meaning of points (a), (b) and (d) of Article 42(1), within the eligibility period;
- c subsequent applications for interim payment submitted during the eligibility period shall only be made:
  - (i) [<sup>X1</sup>for the second application for interim payment, when at least 60 % of the amount included in the first application for interim payment has been spent as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1);]
  - (ii) [<sup>X1</sup>for the third and subsequent applications for interim payment, when at least 85 % of the amounts included in the previous applications for interim payment have been spent as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1);]
- [<sup>X1</sup>(d) each application for interim payment, which includes expenditure related to financial instruments, shall separately disclose the total amount of programme contributions paid to the financial instruments and the amounts paid as eligible expenditure within the meaning of points (a), (b) and (d) of Article 42(1).]

At closure of a programme, the application for payment of the final balance shall include the total amount of eligible expenditure as referred to in Article 42.

2 As regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with point (c) of Article 38(4), the applications for interim payments and for payment of the final balance shall include the total amount of the payments effected by the managing authority for investments in final recipients as referred to in points (a) and (b) of Article 42(1).

[<sup>X13</sup> The Commission shall be empowered to adopt delegated acts in accordance with Article 149, laying down the rules for withdrawal of payments to financial instruments and consequent adjustments in respect of applications for payment.]

[<sup>X14</sup>. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the models to be used when submitting additional information concerning financial instruments with the applications for payment to the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).]

#### Editorial Information

- X1** Substituted by [Corrigendum 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](#)

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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 (Official Journal of the European Union L 347 of 20 December 2013).

## Article 42

### Eligible expenditure at closure

1 At closure of a programme, the eligible expenditure of the financial instrument shall be the total amount of programme contributions effectively paid or, in the case of guarantees, committed by the financial instrument within the eligibility period, corresponding to:

- a payments to final recipients, and in the cases referred to in Article 37(7) payments to the benefit of final recipients;
- b resources committed for guarantee contracts, whether outstanding or already come to maturity, in order to honour possible guarantee calls for losses, calculated on the basis of a prudent ex ante risk assessment, covering a multiple amount of underlying new loans or other risk-bearing instruments for new investments in final recipients;
- c capitalised interest rate subsidies or guarantee fee subsidies, due to be paid for a period not exceeding 10 years after the eligibility period, used in combination with financial instruments, paid into an escrow account specifically set up for that purpose, for effective disbursement after the eligibility period, but in respect of loans or other risk-bearing instruments disbursed for investments in final recipients within the eligibility period;
- d reimbursement of management costs incurred or payment of management fees of the financial instrument.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down the specific rules concerning the establishment of a system of capitalisation of annual instalments for interest rate subsidies and guarantee fee subsidies referred to in point (c) of the first subparagraph.

2 In the case of equity-based instruments and micro-credit, capitalised management costs or fees due to be paid for a period not exceeding six years after the eligibility period, in respect of investments in final recipients which occurred within the eligibility period, which cannot be covered by Articles 44 or 45, may be considered as eligible expenditure when paid into an escrow account specifically set up for that purpose.

3 In the case of equity-based instruments targeting enterprises referred to in Article 37(4) for which the funding agreement referred to in point (b) of Article 38(7) was signed before 31 December 2017, which by the end of the eligibility period invested at least 55 % of the programme resources committed in the relevant funding agreement, a limited amount of payments for investments in final recipients to be made for a period not exceeding four years after the end of eligibility period may be considered as eligible expenditure, when paid into an escrow account specifically set up for that purpose, provided that State aid rules are complied with and that all of the conditions set out below are fulfilled.

The amount paid into the escrow account:

- a shall be used solely for follow-on investments in final recipients having received initial equity investments from the financial instrument within the eligibility period, which are still wholly or partially outstanding;



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- b shall be used solely for follow-on investments to be made in accordance with market standards and market standard contractual arrangements and limited to the minimum necessary to stimulate private sector co-investment, while ensuring continuity of financing for the target enterprises so that both public and private investors can benefit from investments;
- c shall not exceed 20 % of the eligible expenditure of the equity-based instrument referred to in point (a) of the first subparagraph of paragraph 1 from which ceiling capital resources and gains returned to that equity-based instrument during the eligibility period shall be deducted.

Any amounts paid into the escrow account which are not used for investments in final recipients paid in the period referred to in the first subparagraph shall be used in accordance with Article 45.

[<sup>X1</sup>4. The eligible expenditure disclosed in accordance with paragraphs 1, 2 and 3 shall not exceed the sum of the:]

- [<sup>X1</sup>(a) total amount of the support from the ESI Funds paid for the purposes of paragraphs 1, 2 and 3; and]
- b corresponding national co-financing.

[<sup>X1</sup>5. Where management cost and fees as referred to in point (d) of the first subparagraph of paragraph 1 and in paragraph 2 of this Article are charged by the body implementing the fund of funds or bodies implementing financial instruments pursuant to points (a) and (b) of Article 38(4), they shall not exceed the thresholds defined in the delegated act referred to in paragraph 6 of this Article. Whereas management costs shall comprise direct or indirect cost items reimbursed against evidence of expenditure, management fees shall refer to an agreed price for services rendered established via a competitive market process, where applicable. Management costs and fees shall be based on a performance based calculation methodology.]

Management costs and fees may comprise arrangement fees. Where arrangement fees, or any part thereof, are charged to final recipients, they shall not be declared as eligible expenditure.

Management costs and fees, including those incurred for preparatory work in relation to the financial instrument before the signature of the relevant funding agreement, shall be eligible as from the date of signature of the relevant funding agreement.

6 The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the 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.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\).](#)

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### Article 43

#### **Interest and other gains generated by support from the ESI Funds to financial instruments**

1 Support from the ESI Funds paid to financial instruments shall be placed in accounts domiciled within financial institutions in Member States and shall be invested on a temporary basis in accordance with the principles of sound financial management.

[<sup>X1</sup>2. Interest and other gains attributable to support from the ESI Funds paid to financial instruments shall be used for the same purposes, including the reimbursement of management costs incurred or payment of management fees of the financial instrument in accordance with point (d) of the first subparagraph of Article 42(1) and in accordance with Article 42(2) and (3), as the initial support from the ESI Funds, either within the same financial instrument or, following the winding up of the financial instrument, in other financial instruments or forms of support in accordance with the specific objectives set out under a priority, until the end of the eligibility period.]

3 The managing authority shall ensure that adequate records of the use of interest and other gains are maintained.

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- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

### Article 44

#### **Re-use of resources attributable to the support from the ESI Funds until the end of the eligibility period**

1 Resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, including capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by investments, which are attributable to the support from the ESI Funds, shall be re-used for the following purposes, up to the amounts necessary and in the order agreed in the relevant funding agreements:

- a further investments through the same or other financial instruments, in accordance with the specific objectives set out under a priority;
- b where applicable, preferential remuneration of private investors, or public investors operating under the market economy principle, who provide counterpart resources to the support from the ESI Funds to the financial instrument or who co-invest at the level of final recipients;
- c where applicable, reimbursement of management costs incurred and payment of management fees of the financial instrument.

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The need and the level for preferential remuneration pursuant to point (b) of the first subparagraph shall be established in the ex-ante assessment. The preferential remuneration shall not exceed what is necessary to create the incentives for attracting private counterpart resources and shall not over-compensate private investors, or public investors operating under the market economy principle. The alignment of interest shall be ensured through an appropriate sharing of risk and profit and shall be carried out on a normal commercial basis and be compatible with Union State aid rules.

[<sup>X12</sup> The managing authority shall ensure that adequate records of the re-use of the resources referred to in paragraph 1 are maintained.]

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- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

### *Article 45*

#### **[<sup>X1</sup>Re-use of resources after the end of the eligibility period**

Member States shall adopt the necessary measures to ensure that resources paid back to financial instruments, including capital repayments and gains and other earnings or yields generated during a period of at least eight years after the end of the eligibility period, which are attributable to the support from the ESI Funds to financial instruments pursuant to Article 37, are re-used in accordance with the aims of the programme or programmes, either within the same financial instrument or, following the exit of those resources from the financial instrument, in other financial instruments provided that, in both cases, an assessment of market conditions demonstrates a continuing need for such investment, or in other forms of support.]

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- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

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## Article 46

### Report on implementation of financial instruments

1 The managing authority shall send to the Commission a specific report covering the operations comprising financial instruments as an annex to the annual implementation report.

2 The specific report referred to in paragraph 1 shall include, for each financial instrument, the following information:

- a identification of the programme and of the priority or measure from which support from the ESI Funds is provided;
- b description of the financial instrument and implementation arrangements;
- c identification of the bodies implementing financial instruments, and the bodies implementing funds of funds where applicable, as referred to under point (a) of Article 38(1), points (a), (b) and (c) of Article 38(4), and the financial intermediaries referred to under Article 38(6);
- d total amount of programme contributions by priority or measure paid to the financial instrument;
- e total amount of support paid to the final recipients or to the benefit of final recipients, or committed in guarantee contracts by the financial instrument for investments in final recipients, as well as management costs incurred or management fees paid, by programme and priority or measure;
- f the performance of the financial instrument including progress in its set-up and in selection of bodies implementing the financial instrument, including the body implementing a fund of funds;
- g interest and other gains generated by support from the ESI Funds to the financial instrument and programme resources paid back to financial instruments from investments as referred to in Articles 43 and 44;
- h progress in achieving the expected leverage effect of investments made by the financial instrument and value of investments and participations;
- i the value of equity investments, with respect to previous years;
- j contribution of the financial instrument to the achievement of the indicators of the priority or measure concerned.

The information in points (h) and (j) of the first subparagraph may be included only in the annex to the annual implementation reports submitted in 2017 and 2019 as well as in the final implementation report. The reporting obligations set out in points (a) to (j) of the first subparagraph shall not be applied at the level of final recipients.

3 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the models to be used when reporting on financial instruments to the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

4 Each year, starting in 2016, the Commission shall, within six months of the deadline for the submission of the annual implementation reports referred to in Article 111(1) for the ERDF, ESF and the Cohesion Fund, Article 75 of the EAFRD Regulation for the EAFRD, and the relevant provisions of Funds-specific rules for the EMFF, provide summaries of the data on the progress made in financing and implementing the financial instruments, sent by the managing authorities in accordance with this Article. Those summaries shall be transmitted to the European Parliament and the Council and shall be made public.

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## TITLE V

### MONITORING AND EVALUATION

#### CHAPTER I

##### *Monitoring*

##### *Section I*

##### *Monitoring of programmes*

##### *Article 47*

##### **Monitoring committee**

1 Within three months of the date of notification to the Member State of the Commission decision adopting a programme, the Member State shall set up a committee, in accordance with its institutional, legal and financial framework, to monitor implementation of the programme, in agreement with the managing authority (the "monitoring committee").

A Member State may set up a single monitoring committee to cover more than one programme co-financed by the ESI Funds.

2 Each monitoring committee shall draw up and adopt its rules of procedure in accordance with the institutional, legal and financial framework of the Member State concerned.

3 The monitoring committee of a programme under the European territorial cooperation goal shall be set up by the Member States participating in the cooperation programme and by third countries, in the event that they have accepted the invitation to participate in the cooperation programme, in agreement with the managing authority within three months of the date of notification of the decision adopting the cooperation programme to the Member States. That monitoring committee shall draw up and adopt its rules of procedure.

##### *Article 48*

##### **Composition of the monitoring committee**

1 The composition of the monitoring committee shall be decided by the Member State, provided that the monitoring committee is composed of representatives of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 5. Representatives of the partners shall be delegated to be part of the monitoring committee by the respective partners through transparent processes. Each member of the monitoring committee may have a voting right.

The composition of the monitoring committee of a programme under the European territorial goal shall be agreed by the Member States participating in the programme and by third countries in the event that they have accepted the invitation to participate in the cooperation programme. The monitoring committee shall include relevant representatives of those Member States and third countries. The monitoring committee

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may include representatives of the EGTC carrying out activities related to the programme within the programme area.

- 2 The list of the members of the monitoring committee shall be published.
- 3 The Commission shall participate in the work of the monitoring committee in an advisory capacity.
- 4 If the EIB contributes to a programme, it may participate in the work of the monitoring committee in an advisory capacity.
- 5 The monitoring committee shall be chaired by a representative of the Member State or of the managing authority.

#### *Article 49*

### **Functions of the monitoring committee**

1 The monitoring committee shall meet at least once a year and shall review implementation of the programme and progress made towards achieving its objectives. In doing so, it shall have regard to the financial data, common and programme-specific indicators, including changes in the value of result indicators and progress towards quantified target values, and the milestones defined in the performance framework referred to in Article 21(1), and, where relevant, the results of qualitative analyses.

[<sup>X1</sup>2 The monitoring committee shall examine all issues that affect the performance of the programme, including the conclusions of the performance review.]

3 The monitoring committee shall be consulted and shall, if it considers it to be appropriate, give an opinion on any amendment of the programme proposed by the managing authority.

4 The monitoring committee may make observations to the managing authority regarding implementation and evaluation of the programme including actions related to the reduction of the administrative burden on beneficiaries. The monitoring committee shall monitor actions taken as a result of its observations.

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#### *Article 50*

### **Implementation reports**

1 From 2016 until and including 2023, each Member State shall submit to the Commission an annual report on implementation of the programme in the previous financial

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year. Each Member State shall submit to the Commission a final report on implementation of the programme for the ERDF, the ESF and the Cohesion Fund and an annual implementation report for the EAFRD and the EMFF by the deadline established in the Fund-specific rules.

2 Annual implementation reports shall set out key information on implementation of the programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, including changes in the value of result indicators where appropriate, and, beginning from the annual implementation report to be submitted in 2017, the milestones defined in the performance framework. The data transmitted shall relate to values for indicators for fully implemented operations and also, where possible, having regard to the stage of implementation, for selected operations. They shall also set out a synthesis of the findings of all evaluations of the programme that have become available during the previous financial year, any issues which affect the performance of the programme, and the measures taken. The annual implementation report to be submitted in 2016 may also set out, where relevant, actions taken to fulfil ex ante conditionalities.

3 By way of derogation from paragraph 2, specific rules on the data to be transmitted for the ESF may be established in the ESF Regulation.

4 The annual implementation report to be submitted in 2017 shall set out and assess the information referred to in paragraph 2 and progress made towards achieving the objectives of the programme, including the contribution of the ESI Funds to changes in the value of result indicators, when evidence is available from relevant evaluations. That annual implementation report shall set out the actions taken to fulfil the ex-ante conditionalities not fulfilled at the time of adoption of the programmes. It shall also assess the implementation of actions to take into account the principles set out in Articles 7 and 8, the role of the partners referred to in Article 5 in the implementation of the programme and report on support used for climate change objectives.

[<sup>X15</sup>5. The annual implementation report to be submitted in 2019 and the final implementation report for the ESI Funds shall, in addition to the information and assessment referred to in paragraphs 2 and 4, include information on, and assess progress towards, achieving the objectives of the programme and its contribution to achieving the Union strategy for smart, sustainable and inclusive growth.]

6 In order to be deemed admissible, the annual implementation reports referred to in paragraphs 1 to 5 shall contain all the information required in those paragraphs and in the Fund-specific rules.

The Commission shall inform the Member State within 15 working days of the date of receipt of the annual implementation report if it is not admissible, failing which it shall be deemed admissible.

7 The Commission shall examine the annual and final implementation report and inform the Member State of its observations within two months of the date of receipt of the annual implementation report and within five months of the date of receipt of the final implementation report. Where the Commission does not provide observations within those deadlines, the reports shall be deemed to be accepted.

8 The Commission may make observations to the managing authority concerning issues which significantly affect the implementation of the programme. Where such observations are made, the managing authority shall provide all necessary information with regard to those observations and, where appropriate, inform the Commission, within three months, of measures taken.

9 The annual and final implementation reports, as well as a summary for citizens of their content, shall be made available to the public.

*Status: Point in time view as at 16/12/2017.*

**Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1303/2013 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

### **Editorial Information**

- X1** Substituted by Corrigendum 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 (Official Journal of the European Union L 347 of 20 December 2013).

## *Article 51*

### **Annual review meeting**

1 An annual review meeting shall be organised every year from 2016 until and including 2023 between the Commission and each Member State to examine the performance of each programme, taking account of the annual implementation report and the Commission's observations where applicable.

2 The annual review meeting may cover more than one programme. In 2017 and 2019, the annual review meeting shall cover all programmes in the Member State and shall also take account of the progress reports submitted by the Member State, in accordance with Article 52, in those years.

3 By way of derogation from paragraph 1, the Member State and the Commission may agree not to organise an annual review meeting for a programme in years other than 2017 and 2019.

4 The annual review meeting shall be chaired by the Commission or, if the Member State so requests, co-chaired by the Member State and the Commission.

5 The Member State shall ensure that appropriate follow-up is given to comments of the Commission following the annual review meeting concerning issues which significantly affect the implementation of the programme and, where appropriate, inform the Commission, within three months, of the measures taken.

## *Section II*

### **Strategic progress**

## *Article 52*

### **Progress report**

1 By 31 August 2017 and by 31 August 2019, the Member State shall submit to the Commission a progress report on implementation of the Partnership Agreement as at 31 December 2016 and 31 December 2018 respectively.

2 The progress report shall set out information on and assess:

- a changes in the development needs in the Member State since the adoption of the Partnership Agreement;



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- b progress made towards achievement of the Union strategy for smart, sustainable and inclusive growth, as well as of the Fund-specific missions referred to in Article 4(1), through the contribution of the ESI Funds to the thematic objectives selected, and in particular with regard to the milestones set out in the performance framework for each programme, and to the support used for climate change objectives;
- c whether the actions taken to fulfil the applicable ex ante conditionalities set out in the Partnership Agreement not fulfilled at the date of adoption of the Partnership Agreement have been implemented in accordance with the timetable established. This point shall only apply to the progress report to be submitted in 2017;
- d implementation of mechanisms to ensure coordination between the ESI Funds and other Union and national funding instruments and with the EIB;
- e implementation of the integrated approach to territorial development, or a summary of the implementation of the integrated approaches that are based on the programmes, including progress towards achievement of priority areas established for cooperation;
- f where appropriate, actions taken to reinforce the capacity of the Member State authorities and beneficiaries to administer and use the ESI Funds;
- g actions taken, and progress made, with regard to reducing the administrative burden on beneficiaries;
- h the role of the partners referred to in Article 5 in the implementation of the Partnership Agreement;
- i a summary of the actions taken in relation to the application of the horizontal principles referred to in Articles 5, 7 and 8 and policy objectives for the implementation of the ESI Funds.

3 Where the Commission determines, within two months of the date of submission of the progress report, that the information submitted is incomplete or unclear in a manner which significantly affects the quality and reliability of the assessment concerned, it may request additional information from the Member State, on condition that that request does not cause unjustified delays and that the Commission provides reasons to substantiate the alleged lack of quality and reliability. The Member State shall provide to the Commission the information requested within three months and, where appropriate, shall revise the progress report accordingly.

4 The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts establishing the model to be used when submitting the progress report. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

### *Article 53*

#### **Reporting by the Commission and debate on the ESI Funds**

1 The Commission shall transmit each year from 2016 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a summary report in relation to ESI Fund programmes based on the annual implementation reports of the Member States submitted under Article 50 as well as a synthesis of the findings of the available evaluations of programmes. In 2017 and 2019 the summary report shall form a part of the strategic report referred to in paragraph 2.

2 In 2017 and 2019, the Commission shall prepare a strategic report summarising the progress reports of the Member States, which by 31 December 2017 and 31 December 2019, respectively, it shall submit to the European Parliament, the Council, the European Economic

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and Social Committee and the Committee of the Regions and those institutions shall be invited to hold a debate on it.

3 The Council shall debate the strategic report in particular with regard to the contribution of the ESI Funds to the achievement of the Union strategy for smart, sustainable and inclusive growth and shall be invited to provide input to the spring meeting of the European Council.

4 Every two years from 2018, the Commission shall include in its Annual Progress Report to the spring meeting of the European Council a section summarising the most recent of the reports referred to in paragraphs 1 and 2, in particular with regard to the contribution of the ESI Funds to progress made towards the Union strategy for smart, sustainable and inclusive growth.

## CHAPTER II

### *Evaluation*

#### *Article 54*

#### **General Provisions**

1 Evaluations shall be carried out to improve the quality of the design and implementation of programmes, as well as to assess their effectiveness, efficiency and impact. The impact of programmes shall be evaluated, in the light of the mission of each ESI Fund, in relation to the targets under the Union strategy for smart, sustainable and inclusive growth and, having regard to the size of the programme, in relation to GDP and unemployment in the programme area concerned, where appropriate.

2 Member States shall provide the resources necessary for carrying out evaluations, and shall ensure that procedures are in place to produce and collect the data necessary for evaluations, including data related to common and where appropriate programme-specific indicators.

3 Evaluations shall be carried out by internal or external experts that are functionally independent of the authorities responsible for programme implementation. The Commission shall provide guidance on how to carry out evaluations, immediately following the entry into force of this Regulation.

4 All evaluations shall be made available to the public.

#### *Article 55*

#### **Ex ante evaluation**

1 Member States shall carry out ex ante evaluations to improve the quality of the design of each programme.

2 Ex ante evaluations shall be carried out under the responsibility of the authority responsible for the preparation of the programmes. They shall be submitted to the Commission at the same time as the programme, together with an executive summary. The Fund-specific rules may establish thresholds below which the ex ante evaluation may be combined with the evaluation for another programme.

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- 3 Ex ante evaluations shall appraise:
- a the contribution to the Union strategy for smart, sustainable and inclusive growth, having regard to the selected thematic objectives and priorities, taking into account national and regional needs and potential for development as well as lessons drawn from previous programming periods;
  - b the internal coherence of the proposed programme or activity and its relationship with other relevant instruments;
  - c the consistency of the allocation of budgetary resources with the objectives of the programme;
  - d the consistency of the selected thematic objectives, the priorities and corresponding objectives of the programmes with the CSF, the Partnership Agreement and the relevant country specific recommendations adopted in accordance with Article 121(2) TFEU and where appropriate at national level, the National Reform Programme;
  - e the relevance and clarity of the proposed programme indicators;
  - f how the expected outputs will contribute to results;
  - g whether the quantified target values for indicators are realistic, having regard to the support envisaged from the ESI Funds;
  - h the rationale for the form of support proposed;
  - i the adequacy of human resources and administrative capacity for management of the programme;
  - j the suitability of the procedures for monitoring the programme and for collecting the data necessary to carry out evaluations;
  - k the suitability of the milestones selected for the performance framework;
  - l the adequacy of planned measures to promote equal opportunities between men and women and to prevent any discrimination, in particular as regards accessibility for persons with disabilities;
  - m the adequacy of planned measures to promote sustainable development;
  - n measures planned to reduce the administrative burden on beneficiaries.
- 4 Ex ante evaluations shall incorporate, where appropriate, the requirements for strategic environmental assessment set out in Directive 2001/42/EC of the European Parliament and of the Council<sup>(9)</sup> taking into account climate change mitigation needs.

#### *Article 56*

### **Evaluation during the programming period**

- 1 An evaluation plan shall be drawn up by the managing authority or Member State and may cover more than one programme. It shall be submitted in accordance with the Fund-specific rules.
- 2 Member States shall ensure that appropriate evaluation capacity is available.
- 3 During the programming period, the managing authority shall ensure that evaluations, including evaluations to assess effectiveness, efficiency and impact, are carried out for each programme on the basis of the evaluation plan and that each evaluation is subject to appropriate follow-up in accordance with the Fund-specific rules. At least once during the programming period, an evaluation shall assess how support from the ESI Funds has contributed to the objectives for each priority. All evaluations shall be examined by the monitoring committee and sent to the Commission.

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4 The Commission may carry out, at its own initiative, evaluations of programmes. It shall inform the managing authority and the results shall be sent to the managing authority and provided to the monitoring committee concerned.

5 Paragraphs 1, 2 and 3 of this Article shall not apply to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).

#### Article 57

### Ex post evaluation

1 The ex post evaluations shall be carried out by the Commission, or by the Member States in close cooperation with the Commission. Ex post evaluations shall examine the effectiveness and efficiency of the ESI Funds and their contribution to the Union strategy for smart, sustainable and inclusive growth taking account of the targets established in that Union strategy and in accordance with specific requirements established in the Fund-specific rules.

2 Ex post evaluations shall be completed by 31 December 2024.

3 The ex-post evaluation of the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) shall be carried out by the Commission and completed by 31 December 2019.

4 For each of the ESI Funds, the Commission shall prepare, by 31 December 2025, a synthesis report outlining the main conclusions of ex-post evaluations.

## TITLE VI

### TECHNICAL ASSISTANCE

#### Article 58

### Technical assistance at the initiative of the Commission

1 At the initiative of the Commission, the ESI Funds may support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures necessary for implementing this Regulation.

The measures referred to in the first subparagraph may be implemented either directly by the Commission or indirectly, by entities and persons other than Member States in accordance with Article 60 of the Financial Regulation.

The measures referred to in the first subparagraph may include in particular:

- a assistance for project preparation and appraisal, including with the EIB;
- b support for institutional strengthening and administrative capacity-building for the effective management of the ESI Funds;
- c studies linked to the Commission's reporting on the ESI Funds and the cohesion report;
- d measures related to the analysis, management, monitoring, information exchange and implementation of the ESI Funds, as well as measures relating to the implementation of control systems and technical and administrative assistance;

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- e evaluations, expert reports, statistics and studies, including those of a general nature, concerning the current and future operation of the ESI Funds, which may be carried out where appropriate by the EIB;
- f actions to disseminate information, support networking, carry out communication activities, raise awareness and promote cooperation and exchange of experience, including with third countries;
- g the installation, operation and interconnection of computerised systems for management, monitoring, audit, control and evaluation;
- h actions to improve evaluation methods and the exchange of information on evaluation practices;
- i actions related to auditing;
- j the strengthening of national and regional capacity regarding investment planning, needs assessment, preparation, design and implementation of financial instruments, joint action plans and major projects, including joint initiatives with the EIB;
- k the dissemination of good practices in order to assist Member States to strengthen the capacity of the relevant partners referred to in Article 5 and their umbrella organisations;
- [<sup>F2</sup>1 actions financed under Regulation (EU) 2017/825 in order to contribute to delivering the Union strategy for smart, sustainable and inclusive growth.]

To bring about greater efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation shall also contribute to the corporate communication of the political priorities of the Union as far as they are related to the general objectives of this Regulation.

2 The Commission shall set out each year its plans on the type of actions related to the measures listed in paragraph 1, when a contribution from the ESI Funds is envisaged, by means of implementing acts.

#### Textual Amendments

- F2** Substituted by [Regulation \(EU\) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations \(EU\) No 1303/2013 and \(EU\) No 1305/2013.](#)

### Article 59

#### Technical assistance at the initiative of the Member States

1 At the initiative of a Member State, the ESI Funds may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit. The ESI Funds may be used by the Member State to support actions for the reduction of the administrative burden on beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and use those Funds. The ESI Funds may also be used to support actions to reinforce the capacity of relevant partners in line with point (e) of Article 5(3) and to support exchange of good practices between such partners. The actions referred to in this paragraph may concern previous and subsequent programming periods.

2 The Fund-specific rules may add or exclude actions which may be financed by the technical assistance of each ESI Fund.

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## TITLE VII

### FINANCIAL SUPPORT FROM THE ESI FUNDS

#### CHAPTER I

##### *Support from the ESI Funds*

###### *Article 60*

###### **Determination of co-financing rates**

- 1 The Commission decision adopting a programme shall fix the co-financing rate or rates and the maximum amount of support from the ESI Funds in accordance with the Fund-specific rules.
- 2 Technical assistance measures implemented at the initiative of, or on behalf of, the Commission may be financed at the rate of 100 %.

###### *Article 61*

###### **Operations generating net revenue after completion**

1 This Article shall apply to operations which generate net revenue after their completion. For the purposes of this Article 'net revenue' means cash in-flows directly paid by users for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Operating cost-savings generated by the operation shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies.

Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the investment cost.

2 The eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced in advance taking into account the potential of the operation to generate net revenue over a specific reference period that covers both implementation of the operation and the period after its completion.

3 The potential net revenue of the operation shall be determined in advance by one of the following methods chosen by the managing authority for a sector, subsector or type of operation:

- a application of a flat rate net revenue percentage for the sector or subsector applicable to the operation as defined in Annex V or in any of the delegated acts referred to in the second, third and fourth subparagraphs;
- b calculation of the discounted net revenue of the operation, taking into account the reference period appropriate to the sector or subsector applicable to the operation, the profitability normally expected of the category 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.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 in duly justified cases to amend Annex V by adjusting the flat rates established

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therein taking into account historical data, the potential for cost recovery and the polluter-pays principle where applicable.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 establishing flat rates for sectors or subsectors within the fields of ICT, RDI and energy efficiency. The Commission shall notify the delegated acts to the European Parliament and the Council not later than 30 June 2015.

In addition, the Commission shall be empowered to adopt delegated acts in accordance with Article 149 in duly justified cases with regard to adding sectors or subsectors, including subsectors for sectors in Annex V, falling under the thematic objectives defined in the first paragraph of Article 9 and supported by the ESI Funds.

Where the method referred to in point (a) of the first subparagraph is applied, all the net revenue generated during implementation and after completion of the operation shall be considered to be taken into account by the application of the flat rate and shall therefore not be deducted subsequently from the eligible expenditure of the operation.

When a flat rate for a new sector or subsector has been established by the adoption of a delegated act in accordance with the third and fourth subparagraphs, a managing authority may choose to apply the method set out in point (a) of the first subparagraph for new operations in relation to the sector or subsector concerned.

The Commission shall be empowered to adopt delegated acts, in accordance with Article 149, laying down the method referred to in point (b) of the first subparagraph. Where that method is applied, the net revenue generated during implementation of the operation, resulting from sources of revenue not taken into account in determining the potential net revenue of the operation, shall be deducted from the eligible expenditure of the operation, no later than in the final payment claim submitted by the beneficiary.

[<sup>X14</sup>. The method by which the net revenue is deducted from the expenditure of the operation included in the payment application submitted to the Commission shall be determined in accordance with national rules.]

5 As an alternative to the application of the methods laid down in paragraph 3, the maximum co-financing rate referred to in Article 60(1) may, at the request of a Member State, be decreased at the moment of adoption of a programme for a priority or measure under which all operations supported under that priority or measure could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3. The decrease shall be not less than the amount calculated by multiplying the maximum Union co-financing rate applicable under the Fund-specific rules by the relevant flat rate referred to in point (a) of the first subparagraph of paragraph 3.

Where the method referred to in the first subparagraph is applied, all net revenue generated during implementation, and after completion, of the operation shall be considered to be taken into account by application of the decreased co-financing rate and shall therefore not be deducted subsequently from the eligible expenditure of the operations.

6 Where it is objectively not possible to determine the revenue in advance based on any of the methods set out in paragraphs 3 or 5, the net revenue generated within three years of the completion of an operation, or by the deadline for the submission of documents for programme closure fixed in the Fund-specific rules, whichever is the earlier, shall be deducted from the expenditure declared to the Commission.

7 Paragraphs 1 to 6 shall not apply to:

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- a operations or parts of operations supported solely by the ESF;
- b operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000;
- c repayable assistance subject to an obligation for full repayment and prizes;
- d technical assistance;
- e support to or from financial instruments;
- f operations for which public support takes the form of lump sums or standard scale unit costs;
- g operations implemented under a joint action plan;
- h operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation.

Notwithstanding point (b) of the first subparagraph of this paragraph, where a Member State applies paragraph 5, it may include in the relevant priority or measure operations whose total eligible cost before application of paragraphs 1 to 6 does not exceed EUR 1 000 000.

8 In addition, paragraphs 1 to 6 shall not apply to operations for which support under the programme constitutes:

- a de minimis aid;
- b compatible State aid to SMEs, where an aid intensity or an aid amount limit is applied in relation to State aid;
- c compatible State aid, where an individual verification of financing needs in accordance with the applicable State aid rules has been carried out.

Notwithstanding the first subparagraph, a managing authority may apply the paragraphs 1 to 6 to operations which fall under points (a) to (c) of the first subparagraph of this paragraph where this is provided for in national rules.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\).](#)

## *CHAPTER II*

### *Special rules on support from the ESI Funds to PPPs*

#### *Article 62*

#### **PPPs**

The ESI Funds may be used to support PPP operations. Such PPP operations shall comply with applicable law, in particular concerning State aid and public procurement.



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## Article 63

### Beneficiary under PPP operations

1 In relation to a PPP operation, and by way of derogation from point (10) of Article 2, a beneficiary may be either:

- a the public law body initiating the operation; or
- b a body governed by private law of a Member State (the "private partner") selected or to be selected for the implementation of the operation.

2 The public law body initiating the PPP operation may propose that the private partner, to be selected after approval of the operation, be the beneficiary for the purposes of support from the ESI Funds. In that event, the approval decision shall be conditional on the managing authority satisfying itself that the selected private partner fulfils and assumes all the corresponding obligations of a beneficiary under this Regulation.

3 The private partner selected to implement the operation may be replaced as beneficiary during implementation where this is required under the terms and conditions of the PPP or the financing agreement between the private partner and the financial institution co-financing the operation. In that event the replacement private partner or public law body shall become the beneficiary provided that the managing authority satisfies itself that the replacement partner fulfils and assumes all the corresponding obligations of a beneficiary under this Regulation.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down additional rules on the replacement of a beneficiary and on the related responsibilities.

5 The replacement of a beneficiary shall not be considered a change in ownership within the meaning of point (b) of Article 71(1) if that replacement satisfies the applicable conditions set out in paragraph 3 of this Article and in a delegated act adopted pursuant to paragraph 4 of this Article.

## Article 64

### Support for PPP operations

[<sup>X1</sup>1. In the case of a PPP operation where the beneficiary is a public law body, expenditure under a PPP operation which has been incurred and paid by the private partner may, by way of derogation from Article 65(2), be considered as incurred and paid by a beneficiary and included in a payment application to the Commission provided that the following conditions are met:]

- a the beneficiary has entered into a PPP agreement with a private partner;
- b the managing authority has verified that the expenditure declared by the beneficiary has been paid by the private partner and that the operation complies with applicable Union and national law, the programme and the conditions for support of the operation.

[<sup>X2</sup>2. Payments to beneficiaries made in respect of expenditure included in a payment application in accordance with paragraph 1 shall be paid into an escrow account set up for that purpose in the name of the beneficiary.]

3 The funds paid into the escrow account referred to in paragraph 2 shall be used for payments in accordance with the PPP agreement, including any payments to be made in the event of termination of the PPP agreement.

*Status: Point in time view as at 16/12/2017.*

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4 The Commission shall be empowered to adopt delegated acts in accordance with Article 149 laying down the minimum requirements to be included in PPP agreements which are necessary for the application of the derogation laid down in paragraph 1 of this Article, including provisions related to termination of the PPP agreement and for the purpose of ensuring an adequate audit trail.

#### **Editorial Information**

- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\)](#).

### *CHAPTER III*

#### *Eligibility of expenditure and durability*

##### *Article 65*

#### **Eligibility**

1 The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules.

2 Expenditure shall be eligible for a contribution from the ESI Funds if it has been incurred by a beneficiary and paid between the date of submission of the programme to the Commission or from 1 January 2014, whichever is earlier, and 31 December 2023. In addition, expenditure shall only be eligible for a contribution from the EAFRD if the relevant aid is actually paid by the paying agency between 1 January 2014 and 31 December 2023.

3 By way of derogation from paragraph 2, expenditure under the YEI shall be eligible as of 1 September 2013.

4 In the case of costs reimbursed pursuant to points (b) and (c) of the first subparagraph of Article 67(1), the actions constituting the basis for reimbursement shall be carried out between 1 January 2014 and 31 December 2023.

5 By way of derogation from paragraph 4, the starting date in relation to costs reimbursed on the basis of (b) and (c) of the first subparagraph of Article 67(1) for actions under the YEI shall be 1 September 2013.

6 Operations shall not be selected for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.

7 This Article shall be without prejudice to the rules on eligibility of technical assistance at the initiative of the Commission set out in Article 58.

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8 This paragraph shall apply to operations which generate net revenue during their implementation and to which paragraphs 1 to 6 of Article 61 do not apply.

The eligible expenditure of the operation to be co-financed from the ESI Funds shall be reduced by the net revenue not taken into account at the time of approval of the operation directly generated only during its implementation, not later than at the final payment claim submitted by the beneficiary. Where not all the costs are eligible for co-financing, the net revenue shall be allocated pro rata to the eligible and non-eligible parts of the cost.

This paragraph shall not apply to:

- a technical assistance;
- b financial instruments;
- c repayable assistance subject to an obligation for full repayment;
- d prizes;
- e operations subject to the State aid rules;
- f operations for which public support takes the form of lump sums or standard scale unit costs provided that the net revenue has been taken into account ex ante;
- g operations implemented under a joint action plan provided that the net revenue has been taken into account ex ante;
- h operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation; or
- i operations for which the total eligible cost does not exceed EUR 50 000.

For the purposes of this Article and Article 61, any payment received by the beneficiary arising from contractual penalties as a result of a breach of contract between the beneficiary and a third party or third parties or that has occurred as a result of the withdrawal of an offer by a third party chosen under public procurement rules (the 'deposit') shall not be considered as revenue and shall not be deducted from the eligible expenditure of the operation.

9 Expenditure that becomes eligible as a result of an amendment to a programme shall only be eligible from the date of submission to the Commission of the request for amendment or, in the event of application of Article 96(11), from the date of entry into force of the decision amending the programme.

The Fund-specific rules for the EMFF may derogate from the first subparagraph.

10 By way of derogation from paragraph 9, specific provisions on the starting date of eligibility may be established in the EAFRD Regulation.

[<sup>X1</sup>11. An operation may receive support from one or more ESI Funds or from one or more programmes and from other Union instruments, provided that the expenditure item included in a payment application for reimbursement by one of the ESI Funds does not receive support from another Fund or Union instrument, or support from the same Fund under another programme.]

#### Editorial Information

- X1** Substituted by [Corrigendum 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](#)

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Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (Official Journal of the European Union L 347 of 20 December 2013).

## Article 66

### Forms of support

The ESI Funds shall be used to provide support in the form of grants, prizes, repayable assistance and financial instruments, or a combination thereof.

In the case of repayable assistance, the support repaid to the body that provided it, or to another competent authority of the Member State, shall be kept in a separate account or separated with accounting codes and reused for the same purpose or in accordance with the objectives of the programme.

## Article 67

### Forms of grants and repayable assistance

- 1 Grants and repayable assistance may take any of the following forms:
  - a reimbursement of eligible costs actually incurred and paid, together with, where applicable, contributions in kind and depreciation;
  - b standard scales of unit costs;
  - c lump sums not exceeding EUR 100 000 of public contribution;
  - d flat-rate financing, determined by the application of a percentage to one or more defined categories of costs.

Fund-specific rules may limit the forms of grants or repayable assistance applicable to certain operations.

- 2 By way of derogation from paragraph 1, additional forms of grants and methods of calculation may be established in the EMFF Regulation.

- 3 The options referred to in paragraph 1 may be combined only where each option covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.

- 4 Where an operation or a project forming a part of an operation is implemented exclusively through the public procurement of works, goods or services, only point (a) of the first subparagraph of paragraph 1 shall apply. Where the public procurement within an operation or project forming part of an operation is limited to certain categories of costs, all the options referred to in paragraph 1 may be applied.

- 5 The amounts referred to in points (b), (c) and (d) of the first subparagraph of paragraph 1 shall be established in one of the following ways:

- a a fair, equitable and verifiable calculation method based on:
  - (i) statistical data or other objective information;
  - (ii) the verified historical data of individual beneficiaries; or
  - (iii) the application of the usual cost accounting practices of individual beneficiaries;

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- b in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary;
  - c in accordance with the rules for application of corresponding scales of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
  - d rates established by this Regulation or the Fund-specific rules;
  - e specific methods for determining amounts established in accordance with the Fund-specific rules.
- 6 The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

#### *Article 68*

##### **Flat rate financing for indirect costs and staff costs concerning grants and repayable assistance**

- 1 Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:
- a a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
  - b a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;
  - c a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.

The Commission shall be empowered to adopt delegated acts in accordance with Article 149 concerning the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.

- 2 For the purposes of determining staff costs relating to the implementation of an operation, the hourly rate applicable may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours.

#### *Article 69*

##### **Specific eligibility rules for grants and repayable assistance**

- 1 Contributions in kind in the form of provision of works, goods, services, land and real estate for which no cash payment supported by invoices, or documents of equivalent probative value, has been made, may be eligible on condition that the eligibility rules of the ESI Funds and the programme so provide and that all the following criteria are fulfilled:
- a the public support paid to the operation which includes contributions in kind does not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;
  - b the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;

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- c the value and the delivery of the contribution can be independently assessed and verified;
- d in the case of provision of land or real estate, a cash payment, for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State, may be made;
- e in the case of contributions in kind in the form of unpaid work, the value of that work is determined by taking into account the verified time spent and the rate of remuneration for equivalent work.

The value of the land or real estate referred to in point (d) of the first subparagraph of this paragraph shall be certified by an independent qualified expert or duly authorised official body and shall not exceed the limit laid down in point (b) of paragraph 3.

2 Depreciation costs may be considered as eligible where the following conditions are fulfilled:

- a the eligibility rules of the programme allow for it;
- b the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs where reimbursed in the form referred to in point (a) of the first subparagraph of Article 67(1);
- c the costs relate exclusively to the period of support for the operation;
- d public grants have not contributed towards the acquisition of the depreciated assets.

3 The following costs shall not be eligible for a contribution from the ESI Funds and from the amount of support transferred from the Cohesion Fund to the CEF as referred to in Article 92(6):

- a interest on debt, except in relation to grants given in the form of an interest rate subsidy or guarantee fee subsidy;
- b the purchase of land not built on and land built on in the amount exceeding 10 % of the total eligible expenditure for the operation concerned. For derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %. In exceptional and duly justified cases, the limit may be raised above the respective aforementioned percentages for operations concerning environmental conservation;
- c value added tax except where it is non-recoverable under national VAT legislation.

## *Article 70*

### **Eligibility of operations depending on location**

1 Operations supported by the ESI Funds, subject to the derogations referred to in paragraphs 2 and 3, and the Fund-specific rules, shall be located in the programme area.

2 The managing authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:

- a the operation is for the benefit of the programme area;
- b the total amount allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund and EMFF at the level of the priority, or 5 % of the support from the EAFRD at the level of the programme;
- c the monitoring committee has given its agreement to the operation or types of operations concerned;

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d the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.

3 For operations concerning technical assistance or promotional activities, expenditure may be incurred outside the Union provided that the conditions set out in point (a) of paragraph 2 and the obligations in relation to management, control and audit concerning the operation are fulfilled.

4 Paragraphs 1 to 3 shall not apply to programmes under the European territorial cooperation goal and paragraphs 2 and 3 shall not apply to operations supported by the ESF.

#### *Article 71*

### **Durability of operations**

1 An operation comprising investment in infrastructure or productive investment shall repay the contribution from the ESI Funds if within five years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable, it is subject to any of the following:

- a a cessation or relocation of a productive activity outside the programme area;
- b a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
- c a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Sums unduly paid in respect of the operation shall be recovered by the Member State in proportion to the period for which the requirements have not been fulfilled.

Member States may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.

2 An operation comprising investment in infrastructure or productive investment shall repay the contribution from the ESI Funds if within 10 years of the final payment to the beneficiary the productive activity is subject to relocation outside the Union, except where the beneficiary is an SME. Where the contribution from the ESI Funds takes the form of State aid, the period of 10 years shall be replaced by the deadline applicable under State aid rules.

3 Operations supported by the ESF and operations supported by the other ESI Funds that are not investments in infrastructure or productive investments shall repay the contribution from the Fund only where they are subject to an obligation for maintenance of investment under the applicable State aid rules and where they undergo a cessation or relocation of a productive activity within the period laid down in those rules.

4 Paragraphs 1, 2 and 3 shall not apply to contributions to or by financial instruments or to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.

5 Paragraphs 1, 2 and 3 shall not apply to natural persons who are beneficiaries of investment support and, after the completion of the investment operation, become eligible for and receive support under Regulation (EU) No 1309/2013 of the European Parliament and of the Council where the investment concerned is directly linked to the type of activity identified as eligible for support from the European Globalisation Adjustment Fund.

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## TITLE VIII

### MANAGEMENT AND CONTROL

#### CHAPTER I

##### *Management and control systems*

###### *Article 72*

##### **General principles of management and control systems**

Management and control systems shall, in accordance with Article 4(8), provide for:

- (a) a description of the functions of each body involved in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) systems for reporting and monitoring where the body responsible entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

###### *Article 73*

##### **Responsibilities under shared management**

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in this Regulation and in the Fund-specific rules.

###### *Article 74*

##### **Responsibilities of Member States**

1 Member States shall fulfil the management, control and audit obligations, and assume the resulting responsibilities, which are laid down in the rules on shared management set out in the Financial Regulation and the Fund-specific rules.



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2 Member States shall ensure that their management and control systems for programmes are set up in accordance with the Fund-specific rules and that those systems function effectively.

3 Member States shall ensure that effective arrangements for the examination of complaints concerning the ESI Funds are in place. The scope, rules and procedures concerning such arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements. Member States shall inform the Commission, upon request, of the results of those examinations.

4 All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system. The Commission shall adopt implementing acts establishing the terms and conditions with which that electronic data exchange system is to comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).

## CHAPTER II

### ***Commission powers and responsibilities***

#### *Article 75*

### **Commission powers and responsibilities**

1 The Commission shall satisfy itself, on the basis of available information, including information on the designation of bodies responsible for the management and control, the documents provided each year, in accordance with Article 59(5) of the Financial Regulation, by those designated bodies, control reports, annual implementation reports and audits carried out by national and Union bodies, that the Member States have set up management and control systems that comply with this Regulation and the Fund-specific rules and that those systems function effectively during the implementation of programmes.

2 Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks subject to giving at least 12 working days notice to the competent national authority, except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or checks carried out by Member States, the level of risk to the budget of the Union and the need to minimise the administrative burden on beneficiaries in accordance with the Fund-specific rules. The scope of such audits or checks may include, in particular, verification of the effective functioning of management and control systems in a programme or a part thereof, in operations and assessment of the sound financial management of operations or programmes. Officials or authorised representatives of the Member State may take part in such audits or checks.

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits or checks, shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the ESI Funds or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request.

The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national

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legislation. Commission officials and authorised representatives shall not take part, inter alia, in home visits or the formal questioning of persons within the framework of national legislation. However, such officials and representatives shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect of the fundamental rights of the legal subjects concerned.

3 The Commission may require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or the correctness of expenditure in accordance with the Fund-specific rules.

## TITLE IX

### FINANCIAL MANAGEMENT, EXAMINATION AND ACCEPTANCE OF ACCOUNTS AND FINANCIAL CORRECTIONS, DECOMMITMENT

#### CHAPTER I

#### *Financial management*

#### *Article 76*

#### **Budget commitments**

The budget commitments of the Union in respect of each programme shall be made in annual instalments for each Fund during the period between 1 January 2014 and 31 December 2020. The budget commitments relating to the performance reserve in each programme shall be made separately from the remaining allocation to the programme.

[<sup>X1</sup>The decision of the Commission adopting a programme shall constitute a financing decision within the meaning of Article 84(2) of the Financial Regulation] and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each programme, the budget commitments for the first instalment shall follow the adoption of the programme by the Commission.

The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the second paragraph of this Article, except where Article 16 of the Financial Regulation applies.

Following application of the performance framework in accordance with Article 22, where priorities have not achieved their milestones, the Commission shall where necessary decommit the corresponding appropriations committed to the programmes concerned as part of the performance reserve and shall make them available again for the programmes for which the allocation is increased as a result of an amendment approved by the Commission in accordance with Article 22(5).

#### **Editorial Information**

- X1 Substituted by [Corrigendum 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](#)

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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 (Official Journal of the European Union L 347 of 20 December 2013).

## Article 77

### Common rules for payments

1 Payments by the Commission of the contribution from the ESI Funds to each programme shall be made in accordance with budget appropriations and subject to available funding. Each payment shall be posted to the earliest open budget commitment of the Fund concerned.

2 Payments related to the commitments of the performance reserve shall not be made prior to the definitive allocation of the performance reserve, in accordance with Article 22(3) and (4).

3 Payments shall take the form of pre-financing, interim payments and payment of the final balance.

4 For forms of support under points (b), (c) and (d) of the first subparagraph of Article 67(1) and under Articles 68 and 69, costs calculated on the applicable basis shall be regarded as eligible expenditure.

## Article 78

### Common rules for calculating interim payments, and payment of the final balance

The Fund-specific rules shall lay down rules for the calculation of the amount reimbursed as interim payments, and of the final balance. That amount shall be a function of the specific co-financing rate applicable to the eligible expenditure.

## Article 79

### [<sup>X1</sup>Payment applications]

[<sup>X1</sup>1. The specific procedure and information to be submitted for payment applications in relation to each ESI Fund shall be laid down in the Fund-specific rules.]

[<sup>X1</sup>2. The payment application to be submitted to the Commission shall provide all the information necessary for the Commission to produce accounts in accordance with Article 68(3) of the Financial Regulation.]

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- X1** Substituted by Corrigendum 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

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Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (Official Journal of the European Union L 347 of 20 December 2013).

## Article 80

### Use of the euro

Amounts set out in programmes submitted by Member States, [<sup>X1</sup>forecasts of expenditure, payment applications, accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.]

#### Editorial Information

- X1** Substituted by [Corrigendum 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 \(Official Journal of the European Union L 347 of 20 December 2013\).](#)

## Article 81

### Payment of initial pre-financing

1 Following the Commission decision adopting the programme, an initial pre-financing amount for the whole programming period shall be paid by the Commission. The initial pre-financing amount shall be paid in instalments according to budgetary needs. The level of the instalments shall be defined in the Fund-specific rules.

2 Initial pre-financing shall be used only for payments to beneficiaries in the implementation of the programme. It shall be made available without delay to the body responsible for that purpose.

## Article 82

### Clearance of initial pre-financing

The amount paid as initial pre-financing shall be totally cleared from the Commission accounts not later than when the programme is closed.

## Article 83

### Interruption of the payment deadline

1 The payment deadline for an interim payment claim may be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months if:

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- a following information provided by a national or Union audit body, there is clear evidence to suggest a significant deficiency in the functioning of the management and control system;
- [<sup>X1</sup>b the authorising officer by delegation has to carry out additional verifications following information that has come to that officer's attention alerting him or her that expenditure in a payment application is linked to an irregularity having serious financial consequences;]
- c there is a failure to submit one of the documents required under Article 59(5) of the Financial Regulation.

The Member State may agree to an extension of the interruption period for another three months.

The Fund-specific rules for the EMFF may lay down specific bases for interruption of payments linked to non-compliance with rules applicable under the Common Fisheries Policy, which shall be proportionate, having regard to the nature, gravity, duration and recurrence of the non-compliance.

2 The authorising officer by delegation shall limit the interruption to the part of the expenditure covered by the payment claim affected by the elements referred to in the first subparagraph of paragraph 1, unless it is not possible to identify the part of the expenditure affected. The authorising officer by delegation shall inform the Member State and the managing authority in writing immediately of the reason for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

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## *CHAPTER II*

### *Examination and acceptance of accounts*

#### *Article 84*

#### **Deadline for the examination and acceptance of accounts by the Commission**

By 31 May of the year following the end of the accounting period, the Commission shall, in accordance with Article 59(6) of the Financial Regulation, apply procedures for the examination and acceptance of the accounts and inform the Member State as to whether it accepts that the accounts are complete, accurate and true in accordance with Fund-specific rules.

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## CHAPTER III

### **Financial corrections**

#### *Article 85*

#### **Financial corrections by the Commission**

1 The Commission shall make financial corrections by cancelling all or part of the Union contribution to a programme and effecting recovery from the Member State, in order to exclude from Union financing expenditure which is in breach of applicable law.

2 A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:

- a the breach has affected the selection of an operation by the body responsible for support from the ESI Funds or in cases where, due to the nature of the breach, it is not possible to establish that impact but there is a substantiated risk that the breach has had such an effect;
- b the breach has affected the amount of expenditure declared for reimbursement by the budget of the Union or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact but there is a substantiated risk that the breach has had such an effect.

3 When deciding on a financial correction under paragraph 1, the Commission shall respect the principle of proportionality by taking account of the nature and gravity of the breach of applicable law and its financial implications for the budget of the Union. The Commission shall keep the European Parliament informed of decisions taken to apply financial corrections.

4 The criteria and the procedures for applying financial corrections shall be laid down in the Fund-specific rules.

## CHAPTER IV

### **Decommitment**

#### *Article 86*

#### **Principles**

[<sup>X1</sup>1. All programmes shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by pre-financing or by a payment application within a defined period, including any payment application for which all or part is subject to an interruption of the payment deadline or a suspension of payments, shall be decommitted.]

2 The commitment related to the last year of the period shall be decommitted in accordance with the rules to be followed for the closure of the programmes.

3 The Fund-specific rules shall specify the precise application of the decommitment rule for each ESI Fund.

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4 The part of commitments still open shall be decommitted if any of the documents required for the closure have not been submitted to the Commission by the deadlines established in the Fund-specific rules.

5 The budgetary commitments in respect of the performance reserve shall be subject only to the decommitment procedure set out in paragraph 4.

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### *Article 87*

#### **Exception to the decommitment**

1 The amount concerned by decommitment shall be reduced by the amounts equivalent to that part of the budget commitment for which:

- a the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
- [<sup>XI</sup>(b) it has not been possible to make a payment application for reasons of force majeure seriously affecting implementation of all or part of the programme.]

The national authorities claiming force majeure under point (b) of the first subparagraph shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the programme.

For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

2 By 31 January, the Member State shall send to the Commission information on the exceptions referred to in points (a) and (b) of the first subparagraph of paragraph 1 for the amount to be declared by the end of the preceding year.

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## Article 88

### Procedure

1 The Commission shall inform the Member State and the managing authority in good time whenever there is a risk of application of the decommitment rule under Article 86.

2 On the basis of the information it has received as of 31 January, the Commission shall inform the Member State and the managing authority of the amount of the decommitment resulting from that information.

3 The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.

4 By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the financial year concerned, the reduced amount of support over one or more priorities of the programme taking into account the allocation by Fund and by category of region, where appropriate. Failing such submission, the Commission shall revise the financing plan by reducing the contribution from the ESI Funds for the financial year concerned. That reduction shall be allocated to each priority proportionately.

5 The Commission shall amend the decision adopting the programme, by means of implementing acts, not later than 30 September.



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**Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 1303/2013 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- (1) 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).
- (2) Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).
- (3) 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).
- (4) 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).
- (5) Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).
- (6) [F<sup>2</sup>Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013 (OJ L 129, 19.5.2017, p. 1).]
- (7) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
- (8) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).
- (9) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

#### Textual Amendments

- F2** Substituted by Regulation (EU) 2017/825 of the European Parliament and of the Council of 17 May 2017 on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013.

**Status:**

Point in time view as at 16/12/2017.

**Changes to legislation:**

There are outstanding changes not yet made to Regulation (EU) No 1303/2013 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.