



Brussels, 19 December 2017  
(OR. en)

---

---

**Interinstitutional File:  
2016/0282 (COD)**

---

---

**15783/17  
ADD 2**

**CADREFIN 130  
POLGEN 173  
FIN 847  
INST 470  
FSTR 91  
FC 100  
REGIO 125  
SOC 815  
AGRISTR 119  
PECHE 532  
TRANS 561  
ESPACE 64  
TELECOM 365  
CODEC 2087**

**NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee

---

No. Cion doc.: 12187/16 + ADD 1 + ADD 2 - COM(2016) 605 final + ANNEX 1 and 2

---

Subject: Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council (Omnibus proposal) (**first reading**)

– *Analysis of the final compromise text with a view to agreement*

---

**OUTCOME OF TRILOGUES**<sup>1,2</sup>

---

<sup>1</sup> Changes compared to the Commission proposal are highlighted in **bold** and ~~strikethrough~~.

<sup>2</sup> Text between square brackets ([...]) refers to cross-references with the Financial Regulation or tax provisions which need alignment with those provisions in the Financial Regulation part - still to be agreed - (see doc. 15783/17 ADD 1).

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, ~~(EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013,~~ (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, ~~(EU) No 652/2014~~ of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council**

(170) In order to ensure that the European Union Programme for Employment and Social Innovation (EaSI) provides swiftly adequate resources to support changing political priorities, the indicative shares for each of the three axis and the minimum percentages for each of the thematic priorities within the individual axis should allow for a greater flexibility, **while maintaining an ambitious deployment rate for EURES cross-border partnerships**. This should improve the management of the Programme and allow focussing budgetary resources on actions producing better employment and social results.

(171) In order to facilitate investments in cultural and sustainable tourism infrastructure, without prejudice to the full application of EU environmental legislation, in particular the Directives on Strategic Environmental Assessment and Environmental Impact Assessment as appropriate, certain restrictions as regards the scope of support for these investments should be **clarified removed. It is therefore necessary to introduce clear restrictions as regards limiting the scale of contribution of the ERDF to such investments from [OJ to include: date of entry into force of this Regulation].**

- (172) ~~With a view~~ **In order** to responding to the challenges posed by increasing flows of migrants and refugees, the objectives to which the ERDF may contribute in its support of migrants and refugees should be spelled out **with a view to enabling Member States to provide investments focusing on legally staying third-country nationals, including asylum applicants and beneficiaries of international protection.**
- (173) As the amendment of provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>1</sup> provides more favourable conditions for certain revenue generating operations for which amounts or rates of support are defined in ~~Annex II to the~~ EMFF Regulation it is necessary to establish a different date of entry into force for these provisions to ensure equal treatment of operations supported on the basis of Regulation (EU) No 1303/2013.
- (174) With a view to facilitating the implementation of operations the scope of potential beneficiaries should be enlarged. Therefore, natural persons should be eligible for cohesion policy support **and more flexibility should be foreseen for defining the beneficiary in the context of state aid schemes.**
- (174a)As a matter of practice, macroregional strategies are agreed upon the adoption of Council conclusions. As the case has been since the entry into force of Regulation (EU) No 1303/2013, these conclusions may be endorsed by the European Council, as appropriate, taking into account the powers of this institution laid down in Article 15 TEU.**

---

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

- (175) With a view to ensure sound financial management in ESI Funds which are managed under shared implementation, and clarify Member States obligations, the general principles should explicitly refer to the principles of internal control of budget implementation and of avoidance of conflict of interests established in the Financial Regulation.
- (176) In view of maximising the synergies between all Union funds to address the challenges of migration and asylum in an effective way, it should be ensured that, when the thematic objectives are translated into priorities in the Fund-specific rules, such priorities cover the appropriate use of each Fund for these areas. **Where appropriate, coordination with the Asylum, Migration and Integration Fund should be ensured.**
- (177) In order to ensure coherence of programming **arrangements**, an alignment between Partnership Agreements and ~~operational~~ **the amendments of programmes approved by the Commission in the previous calendar year** should be carried out once per year.
- ~~(178) In view of optimising the use of the financial resources allocated to Member States under Cohesion policy, it is necessary to allow Member States to transfer ESI Funds allocation to instruments established under the Financial Regulation or under sector specific Regulations.~~
- (179) In order to facilitate the preparation and implementation of community-led local development strategies the lead fund should be allowed to cover preparatory, running and animation costs.
- (180) In order to facilitate the implementation of community-led local development and integrated territorial investments, the roles and responsibilities of local action groups in the case of community-led local development strategies and local authorities, regional development bodies or non-governmental organisations in the case of ITIs in relation to other programme bodies should be clarified. Designation as intermediate body should only be required in cases where the relevant bodies carry out tasks which go beyond those described in the relevant Article or where it is required by the Fund specific rules.

(181) It is necessary to clarify that managing authorities should have the possibility to implement financial instruments through a direct **award of a contract** ~~award~~ to the EIB and to international financial institutions (IFIs).

(182) Many Member States have established publicly-owned banks or ~~financial~~ institutions that operate under a public policy mandate to promote economic development **activities**. Such banks or ~~financial~~ institutions have specific characteristics which differentiate them from private commercial banks in relation to their ownership, their development mandate and the fact that they do not ~~have the objective of~~ **primarily focus on** maximising profits. The role of such banks **or institutions** is notably to mitigate market failures, where in certain regions or for certain policy areas or sectors financial services are underprovided by commercial banks. These publicly-owned banks or ~~financial~~ institutions are well-placed to promote access to the ESI funds while maintaining competitive neutrality. Their specific role and characteristics can allow Member States to increase the use of financial instruments for delivering ESI funds in order to maximise the impact of these funds in the real economy. Such an outcome would be in line with the Commission policy to facilitate the role of such banks or institutions as fund managers both in the implementation of ESI funds as well as in the combination of ESI funds with EFSI financing, as set out in particular in the Investment Plan for Europe. **Without prejudice to contracts already awarded for the implementation of financial instruments in compliance with applicable law, it is justified therefore to allow clarify that** managing authorities ~~to~~ **can** award contracts directly to such publicly-owned banks or ~~financial~~ institutions. Nevertheless, in order to ensure that this possibility of direct award remains consistent with the principles of the internal market, strict conditions to be fulfilled by publicly-owned banks or institutions should be laid down for this provision to be applicable. **These conditions include that there should be no direct private capital participation, with the exception of non-controlling and non-blocking forms of private capital participation in line with requirements in Directive 2014/24/EU. Moreover, and strictly limited to the scope of application of this Regulation, a publicly-owned bank or institution should also be allowed to implement financial instruments if private capital participation confer no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds.**

(183) In order to maintain ~~the option of the SME Initiative as an instrument to help increase the competitiveness of the SMEs,~~ **the possibility to contribute ERDF and EAFRD to joint uncapped guarantee and securitisation financial instruments**, it is necessary to provide that Member States can contribute to ~~joint uncapped guarantee and securitisation financial instruments in favour of SMEs~~ **these instruments** during the entire programming period and to update relevant provisions relating to this option, such as those on ex-ante assessments and evaluations **or to introduce for ERDF the possibility of programming at priority axis level.**

(184) In adopting Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal – the European Fund for Strategic Investments (EFSI) – it was ~~desired~~ **intended** to enable Member States to use ESI Funds to contribute to the financing of eligible projects ~~that are supported under by the EU guarantee covered by the EFSI.~~ **supported under** by the EU guarantee covered by the EFSI. A specific provision should be introduced to set out the terms and conditions to allow for better interaction and complementarity that will facilitate the possibility to combine ESI funds with EIB financial products under the EFSI's ~~Union~~ **EU** Guarantee.

**[(184a)In carrying out their operations, the bodies implementing financial instruments should, in accordance with the Union legislation and taking utmost account of relevant principles and guidelines laid down in Council conclusions (notably those of 8 November 2016 - as published in OJ C 461, 10.12.2016, p. 2-5 -, in particular in their Annex), not make use of or engage in tax avoidance structures, in particular aggressive tax planning schemes.]**

- (185) In order to simplify and harmonise the control and audit requirements and to improve the accountability of the financial instruments implemented by EIB and other International Financial Institutions, it is necessary to amend the provisions on management and control for financial instruments to facilitate the assurance process. **This amendment is without prejudice to the applicable rules, as laid down in Article 40 of the Common Provisions Regulation for financial instruments under Article 38(1)(a) and 39 of the Common Provisions Regulation and established by a funding agreement signed before the entry into force of this Regulation.**
- (186) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the model of the control reports and the annual audit reports as defined in Article 40(1) of this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup>.
- (187) In order to ensure consistency with the treatment of financial corrections during the 2007-2013 programming period, it is necessary to clarify that in the case of financial instruments, it should be possible to allow for an individual irregularity to be replaced by regular expenditure within the same operation so that the related financial correction will not have the consequence of a net loss for the financial instrument operation.
- (187a) In order to provide more time for the signature of funding agreements allowing for use of escrow accounts for disbursements after the end of the eligibility period for equity-based instruments, the deadline for signature of such funding agreements should be extended until 31 December 2018.**

---

<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (188) In order to incentivise ~~private~~ investors **operating under the market economy principle** to co-invest in public policy projects, the concept of differentiated treatment of investors, which allows under specific conditions that ESI Funds can take a subordinated position to an ~~private~~ investor **operating under the market economy principle** and EIB financial products under the EFSI's EU Guarantee, should be introduced. At the same time, the conditions for application of such a differentiated treatment when implementing ESI funds should be laid down.
- (189) Given the protracted low interest environment and in order not to unduly penalise bodies implementing financial instruments, it is necessary, subject to active and diligent treasury management, to enable financing of negative interest generated as a result of investments of ESI Funds pursuant to Article 43 of the Common Provisions Regulation from resources paid back into the financial instrument.
- (190) In order to align reporting requirements with the new Article 43(a) on differentiated treatment of investors and to avoid a duplication between the "value of investments" in Article 46(2)(h) and "equity investments" in Article 46(2)(i), it is necessary to update Article 46 of the Common Provisions Regulation.
- (191) In order to facilitate the implementation of the ESI funds, it is necessary to grant Member States the possibility of direct award for technical assistance actions implemented by EIB/EIF, other IFIs and publicly-owned banks or financial institutions.
- (191-a) In order to further harmonise the conditions for operations generating net revenue after completion, the provisions in this Regulation should apply to already selected but still ongoing operations and to operations which are still to be selected under this programming period.**
- (191a) In order to give a strong incentive to the implementation of energy efficiency measures, cost-savings that result from the increase of energy efficiency by an operation should not be treated as net revenue.**



- (192) With a view to facilitate the implementation of revenue generating operations, reduction of the co-financing rate should be allowed at any time of the programme implementation and possibilities for the establishment of flat rate net revenue percentages at national level should be provided.
- (193) Due to the late adoption of the Regulation (EU) No 508/2014 of the European Parliament and of the Council and the fact that aid intensity levels have been established by that Regulation, it is necessary to set out certain exemptions for the EMFF as regards revenue generating operations.
- (194) To reduce administrative burden for beneficiaries the threshold which exempts certain operations from calculating and taking into account revenue generated during their implementation should be raised.
- (195) In order to facilitate synergies between ESI Funds and other Union instruments, expenditure incurred may be reimbursed from different ESI Funds and Union instruments based on a proportion agreed in advance.
- (196) In order to promote the use of lump sums, and given the fact that lump sums need to be based on a fair, equitable and verifiable calculation method which should ensure sound financial management, the applicable upper limit for their use should be removed.
- (197) In view of the aim to reduce the administrative burden of the implementation of projects by beneficiaries a new form of simplified costs option for financing based on conditions others than costs of operations should be introduced.

**(197a) In order to make the associated administration less burdensome and to simplify the rules governing the use of funds, Member States should increasingly make use of simplified cost options.**

(198) Taking into account the fact that, in accordance with Article 71 of Regulation (EU) No 1303/2013, the obligation to ensure the durability of investment operations applies from the last payment to the beneficiary, and that, when the investment consists in the lease purchase of a new machinery and equipment, the last payment occurs at the end of the contract period, this obligation should not apply to this type of investment.

(199) In order to ensure a broad application of simplified cost options, an obligatory use of standard scales of unit costs, lump sums or flat rates should be set out for operations below a certain threshold for the ERDF and ESF, **subject to the relevant transitional provisions as set out in this Regulation. The Managing Authority should be given the possibility to extend the transitional period for a period it considers appropriate if it considers that this obligation creates a disproportionate administrative burden. This obligation should not apply for operations receiving support within the framework of a State aid scheme that does not constitute *de minimis* aid in respect of which all forms of grants and repayable assistance should continue to be an option.** At the same time the use of draft budgets as an additional methodology for determining simplified costs should be introduced **for all ESI Funds.**

(200) In order to facilitate earlier and more targeted application of simplified cost options, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of **supplementing** the ~~definition of~~ **provisions on** the standard scales of unit costs or the flat rate financing, the fair, equitable and verifiable method on which they may be established, and **by specifying detailed modalities concerning** the financing based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes rather than on costs **and their application**. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(201) In order to reduce the administrative burden, the use of flat rates which do not require a methodology to be established by Member States should be increased. Two additional flat rates should therefore be introduced; one for calculating direct staff costs and the other one for calculating the remaining eligible costs based on staff costs. In addition, further clarification should be provided on the methods to calculate staff costs.

(202) With a view to improving the effectiveness and impact of operations implementation of nation-wide operations or operations covering different programme areas should be facilitated and possibilities for expenditure outside the Union for certain investments should be increased.

(203) In order to encourage Member States to make use of major projects appraisal by independent experts, the declaration of expenditure relating to the major project to the Commission prior to the positive appraisal by the independent expert should be allowed once the Commission has been informed about the submission of the relevant information to the independent expert.

- (204) In order to promote the use of joint action plans which will reduce administrative burden for beneficiaries it is necessary to reduce regulatory requirements linked to the setting up of a joint action plan **while maintaining an appropriate focus on horizontal principles including gender equality and sustainable development, which have generated important contributions to the effective implementation of ESI Funds.**
- (205) In order to avoid unnecessary administrative burden for beneficiaries, the rules on information and communication should respect the principle of proportionality. Accordingly, it is important to clarify the scope of application of the rules on information and communication.
- (206) With a view to reducing the administrative burden and ensuring the effective use of technical assistance across Funds and categories of regions flexibility for the calculation and monitoring of the respective limits applicable to technical assistance of Member States should be increased
- (207) With a view to streamlining implementation structures, it should be clarified that the possibility for the managing authority, certifying authority and the audit authority to be part of the same public body is also available to programmes under the European Territorial Cooperation Goal.
- (208) The responsibilities of the managing authorities regarding the verification of expenditure when simplified cost options are being used should be specified more in detail.
- (209) To ensure that beneficiaries can fully benefit from the simplification potential of e-governance solutions in the implementation of the ESI Funds and the Fund for European Aid to the Most Deprived (FEAD), especially with a view to facilitating full electronic document management, it is necessary to clarify that a paper trail is not necessary if certain conditions are met.

**(209a) In order to increase proportionality of controls and to ease the administrative burden from overlapping controls, especially for small beneficiaries, without undermining the principle of sound financial management, the single audit principle for the Funds and the EMFF should prevail and the thresholds below which an operation is not subject to more than one audit should be doubled.**

**(209b) It is important to enhance the visibility of the ESI Funds and to raise awareness of their results and successes with the general public. Information and communication activities remain essential in publicising the achievements of the ESI Funds and in demonstrating how the Union's financial resources are invested.**

(210) In order to ensure equal treatment of operations supported on the basis of this Regulation, it is necessary to establish the date of application of certain amendments to Regulation (EU) No 1303/2013 of the European Parliament and of the Council<sup>1</sup>.

(211) With a view to facilitating certain target groups' access to the ESF, the collection of data for certain indicators should ~~be based on representative samples and twice in the programming period~~ **not be required.**

**(211a) In order to ensure that that the entire programming period for Regulation (EU) No 1301/2013, Regulation (EU) No 1303/2013, Regulation (EU) No 1304/2013 and Regulation (EU) No 223/2014 is governed by a coherent set of rules, it is necessary that some of the amendments to these Regulations apply from 1 January 2014. By providing for a retroactive application of these amendments, legitimate expectations are taken into account.**

---

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

**(211b) In order to expedite implementation of financial instruments combining ESIF support with EIB financial products under the EFSI and to provide a continuous legal basis for the signature of funding agreements allowing for use of escrow accounts for equity-based instruments, it is necessary that some of the amendments to this Regulation should apply with effect from 1 January 2018. By providing for a retroactive application of these amendments, the advanced facilitation of the financing of projects through combined ESIF – EFSI support is ensured and a legal gap between the expiry date of certain provisions in Regulation (EU) No 1303/2013 and the entry into force date of their extension by virtue of this Regulation is avoided.**

(238) The EGF should continue after 31 December 2017 to temporarily provide assistance to young people not in employment, education or training (NEETs) who reside in regions disproportionately impacted by major redundancies.

(239) ~~In order to increase the efficiency of the intervention, a blending facility or b~~Blending facilities may be established under the Connecting Europe Facility (CEF). Such blending facilities ~~should~~ **could** finance blending operations which are actions combining non-reimbursable forms of support, **such as Member States' budget, CEF grants and the European Structural and Investment Funds**, and/or financial instruments from the Union budget, including **combinations** of CEF equity and CEF debt financial instruments and financing from ~~the~~ EIB Group (including EIB financing under EFSI), **national promotional banks** development or other finance institutions as well as investors **and/or private financial support, including both direct and indirect financial contributions, including through Public Private Partnerships.**

- (239a) The design and set up of blending facilities should be based on an ex-ante assessment in accordance with the Financial Regulation and should reflect the results of lessons learned from the implementation of the CEF "Blending Call" referred to in the CEF Multi Annual Work Programme 2017 published on 20 January 2017. CEF blending facilities should be established by the multiannual and/or annual work programmes and adopted in accordance with Articles 17 and 25 of Regulation (EU) No 1316/2013. The Commission should ensure transparent and timely reporting to the European Parliament and the Council on the implementation of any blending facility.**
- (239b) The objective of CEF Blending Facilities is to facilitate and streamline one application for all forms of support, including Union grants from CEF and private sector finance. Those blending facilities should aim to optimise the application process for project promoters by providing a single evaluation process, from the technical and financial points of view.**
- (239c) CEF Blending Facilities should increase flexibility for submitting projects and simplify and streamline the process of project identification and financing. They should also increase the ownership and commitment of the financial institutions involved and therefore mitigate risks with the projects.**
- (239d) CEF Blending Facilities should bring enhanced coordination, exchange of information and cooperation between Member States, the Commission, EIB, national promotional banks and private investors with the aim of generating and supporting a healthy pipeline of projects pursuing CEF policy objectives.**

(240) ~~A CEF Blending Facility~~ ~~ies under CEF~~ should aim to enhance the multiplier effect of Union spending by attracting additional resources from private investors, **thus ensuring a maximum degree of private investor involvement**. In addition, ~~it~~ **they** should ensure that the actions supported become economically and financially viable **and help to avoid a lack of investment leverage**. **They should contribute to the achievement of the Union's objectives on meeting the targets set at the Paris Climate Conference (COP 21), job creation and cross-border connectivity**. **It is important that when CEF and EFSI are both used for financing actions, the Court of Auditors examines whether the financial management has been sound in line with its tasks set out in Article 287 TFEU and in accordance with Article 24(2) of Regulation (EU) No 1316/2013.**

(240aa) **In most cases, grants in the transport sector are expected to remain the primary means of supporting Union policy objectives. The application of blending facilities should therefore not reduce the availability of such grants.**

(240ab) **Participation of private co-investors in the transport projects could be facilitated by mitigating the financial risk. First loss guarantees provided by the EIB under the joint financial mechanisms supported by the Union budget such as Blending Facilities can be appropriate to that end.**

(240b) **Funding from the CEF should be based on the selection and award criteria established pursuant to Article 17(5) of Regulation (EU) No 1316/2013 regardless of the form of funding used, or combination thereof.**

(240c) **The experience gained in blending should be taken into consideration in the evaluations of the CEF Regulation.**

(240d) **The introduction of the blending facility by this Regulation should not be understood to prejudge the negotiation of the post 2020 multiannual financial framework.**



(241) **Taking into account the very high rate of execution of the CEF in the transport sector and** In order to support the implementation of projects with most value added for the Trans European Transport Network concerning the Core Network Corridors, cross border projects, ~~and~~ projects on the other section of the Core Network **and projects eligible under the horizontal priorities as listed in Annex I of Regulation (EU) No 1316/2013**, it is necessary to **exceptionally allow for additional** flexibility in the use of the multiannual work programme allowing to reach up to 95 % of the financial budgetary resources indicated in ~~the~~ Regulation (EU) No 1316/2013. **It is, however, important that further support is provided in the remaining CEF implementing period to priorities covered by annual work programmes.**

(241a) **Due to the different nature of the CEF Telecom sector as compared to CEF Transport and CEF Energy sectors (smaller average size of grants, type of costs and type of projects), unnecessary burden on beneficiaries and Member States participating in related actions should be avoided through a lighter cost of certification obligation, without weakening the principle of sound financial management.**

(242) Only grants and procurement may currently be used to support actions in the area of Digital Service Infrastructures. In order to ensure **that the Digital Service Infrastructures function as efficiently** as possible, **other** financial instruments **which are currently used under CEF, including innovative financial instruments**, should also be made available to support these actions.

(244) In order to avoid unnecessary administrative burden for managing authorities that could hinder efficient implementation of the FEAD, it is appropriate to simplify and facilitate the procedure for amendment of non-essential elements of operational programmes.

(245) With a view to further simplify the use of the FEAD, it is appropriate to establish additional provisions as regards eligibility of expenditure, in particular, as regards the use of standard scales of unit costs, lump sums and flat rates.

(246) In order to avoid unfair treatment of partner organisations, irregularities that are imputable only to the body in charge of purchasing the assistance, should not affect the eligibility of expenditure of partner organisations.

~~(247) It is appropriate to clarify the definition of "eligibility rules" in order to ensure legal certainty in operations supported by the FEAD.~~

~~(248) In order to simplify the implementation of the FEAD and avoid legal uncertainty, certain responsibilities of Member States on management and control should be clarified.~~

(249) In order to simplify the implementation of the ESI Funds and the FEAD and avoid legal uncertainty, certain responsibilities of Member States on management and control should be clarified.

*Article 262*

*Amendments to Regulation (EC) No 2012/2002 (EUSF)*

Council Regulation (EC) No 2012/2002<sup>5</sup> is amended as follows:

1. ~~In Article 4, in paragraph 3, the first subparagraph is replaced by the following:~~

~~"When the Commission has concluded that the conditions are met for providing a financial contribution from the Fund, the Commission shall without delay submit to the European Parliament and the Council the necessary proposals for mobilisation of the Fund. Those proposals shall include:~~

~~(a) all available information, as referred to in paragraph 1;~~

~~(b) all other relevant information in the possession of the Commission; (c) a demonstration that the conditions of Article 2 are met; and~~

~~(d) a justification of the amounts proposed".~~

2. ~~Article 4, paragraph 4, is amended as follows:~~

~~"4. Upon the adoption by the European Parliament and the Council of the decision to mobilise the Fund, the Commission shall adopt a decision, by means of an implementing act, awarding the financial contribution from the Fund and shall pay that financial contribution immediately and in a single instalment to the beneficiary State. If an advance has been paid pursuant to Article 4a only the balance shall be paid."~~

*Article 263*  
*Amendments to Regulation (EU) No 1296/2013*

Regulation (EU) No 1296/2013 of the European Parliament and of the Council<sup>1</sup> is amended as follows:

1. In Article 5, paragraph 2 is replaced by the following:
  - "2. The following indicative percentages shall apply on average over the whole period of the Programme to the axes set out in Article 3(1):
    - (a) at least ~~18~~ **55** % to the Progress axis;
    - (b) at least 18 % to the EURES axis;
    - (c) at least 18 % to the Microfinance and Social Entrepreneurship axis."
2. Article 14 is amended as follows:
  - (a) Paragraph 1 is replaced by the following:
    - "1. The Progress axis shall support actions in ~~one or more~~ of the thematic sections listed in points (a), (b) and (c). **Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (a) of Article 5(2) between the different sections shall respect the following minimum percentages:**
      - (a) employment, in particular to fight youth unemployment: **20 %;**
      - (b) social protection, social inclusion and the reduction and prevention of poverty: **45 %;**

---

<sup>1</sup> Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).

(c) working conditions: 7 %.

**Any remainder shall be allocated to one or more of the thematic sections referred to in points (a), (b), or (c), or to a combination of them."**

(b) paragraph 2 is amended as follows:

"2. From the overall allocation for the Progress axis, a significant share shall be allocated to the promotion of social experimentation as a method for testing and evaluating innovative solutions with a view to upscaling them."

3. Article 19 is replaced by the following:

*"Article 19*

*Thematic sections and financing*

The EURES axis shall support actions in ~~one or more~~ of the thematic sections listed in points (a), (b) and (c). **Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (b) of Article 5(2) between the different sections shall respect the following minimum percentages:**

- (a) transparency of job vacancies, applications and any related information for applicants and employers: **15 %**;
- (b) development of services for the recruitment and placing of workers in employment through the clearance of job vacancies and applications at Union level, in particular targeted mobility schemes: **15 %**;
- (c) cross-border partnerships: **18 %**.

**Any remainder shall be allocated to one or more of the thematic sections referred to in points (a), (b), or (c), or to a combination of them."**

4. Article 25 is replaced by the following:

*"Article 25*

*Thematic sections and financing*

The Microfinance and Social Entrepreneurship axis shall support actions in ~~one or more~~ of the thematic sections listed in points (a) and (b). **Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (c) of Article 5(2) between the different sections shall respect the following minimum percentages:**

- (a) microfinance for vulnerable groups and micro-enterprises: **35 %;**
- (b) social entrepreneurship: **35 %.**

**Any remainder shall be allocated to the thematic sections referred to in points (a) or (b) or to a combination of them."**

5. Article 33 is deleted.

*Article 264*  
*Amendments to Regulation (EU) 1301/2013*

Regulation (EU) No 1301/2013 is amended as follows:

1. In Article 3, in paragraph 1, point (e) is replaced by the following:

"(e) investment in the development of endogenous potential through fixed investment in equipment and infrastructure, including cultural and sustainable tourism infrastructure, services to enterprises, support to research and innovation bodies and investment in technology and applied research in enterprises;"

**1a. In Article 3, in paragraph 1, the following subparagraph is added:**

**"Investment into cultural and sustainable tourism infrastructure referred to in point (e) of paragraph 1 shall be considered small scale and eligible for support, if the ERDF co-financing does not exceed EUR 10 000 000; that ceiling shall be raised to EUR 20 000 000 in the case of infrastructure considered to be world cultural heritage within the meaning of Article 1 of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage."**

2. In Article 5, in paragraph 9, the following point (e) is added:

"(e) supporting the reception and social and economic integration of migrants and refugees;"

3. In the table of Annex I, the text starting with "Social infrastructure" until the end of the table is replaced by the following:

"Social infrastructure

Childcare & education	Persons	Capacity of supported childcare or educational infrastructure
Health	Persons	Population covered by improved health services
Housing	housing units	Rehabilitated housing
	housing units	Rehabilitated housing, of which for migrants and refugees (not including reception centres)
Migrants and refugees	Persons	Capacity of infrastructure supporting migrants and refugees (other than housing)

Urban Development specific indicators

	Persons	Population living in areas with integrated urban development strategies
	square metres	Open space created or rehabilitated in urban areas
	square metres	Public or commercial buildings built or renovated in urban areas

"



Article 265

Amendments to Regulation (EU) No 1303/2013

1. Article 2 is amended as follows:

(a) point 10 is replaced by the following:

"(10) "beneficiary" means a public or private body or a natural person, responsible for initiating or both initiating and implementing operations; and in the context of State aid schemes, as defined in point 13 of this Article, the body which receives the aid, **except where the aid per undertaking is less than EUR 200 000, for which the Member State may decide that the beneficiary is the body granting the aid, without prejudice to *de minimis* regulations<sup>1</sup>**; and in the context of financial instruments under Title IV of Part Two of this Regulation, it means the body that implements the financial instrument or the fund of funds as appropriate."

(b) point 31 is replaced by the following:

"(31) "macroregional strategy" means an integrated framework **agreed by the Council and, where appropriate, endorsed by the European Council**, which may be supported by the ESI Funds among others, to address common challenges faced by a defined geographical area relating to Member States and third countries located in the same geographical area which thereby benefit from strengthened cooperation contributing to achievement of economic, social and territorial cohesion;"

---

<sup>1</sup> **Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1-8). Commission Regulation (EU) No 1408/2013 of 24 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9). Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45-54).**

[2. In Article 4, in paragraph 7, the reference to "Article 59 of the Financial Regulation" is replaced by "Article 62 of the Financial Regulation".]

[3. In Article 4, paragraph 8 is replaced by the following:

"8. The Commission and the Member States shall respect the principle of sound financial management in accordance with Articles 31, 34(1) and 59 of the Financial Regulation."]

4. In Article 9, the following subparagraph is added:

"The priorities established for each of the ESI Funds in the Fund specific rules shall in particular cover the appropriate use of each Fund in the areas of migration and asylum. **In this context, coordination with the Asylum, Migration and Integration Fund shall be ensured, where appropriate.**"

5. In Article 16, the following paragraph 4a is inserted:

"4a. Where applicable, the Member State shall submit each year by 31 January an amended Partnership Agreement following the approval of amendments of one or more programmes by the Commission in the previous calendar year ~~in accordance with the second subparagraph of Article 30(2).~~

The Commission shall adopt each year by 31 March a decision confirming that the amendments to the Partnership Agreement reflect one or more programme amendments approved by the Commission in the previous calendar year.

That decision may include the amendment of other elements of the Partnership Agreement pursuant to the proposal referred to in paragraph 4, provided that the proposal is submitted to the Commission by 31 December of the previous calendar year.";

**5a. In Article 30, paragraphs 2 and 3 are replaced by the following:**

**"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, the procedure set out in paragraph 4a of Article 16 shall apply.**

**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."**

6. The following Article 30a is inserted:

*"Article 30a*

1. ~~Part of a Member State ESI Funds allocation may, at the request of that Member State and in agreement with the Commission, be transferred to one or several instruments established under the Financial Regulation or under sector specific Regulations or to enhance the risk bearing capacity of the EFSI in accordance with Article 125 of the Financial Regulation. The request to transfer the ESI Funds allocation should be submitted by 30 September.~~
2. ~~Only financial appropriations of future years in the financial plan of a programme may be transferred.~~
3. ~~The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments to the programme and to the partnership agreement shall be made in accordance with Article 30(2) which shall set out the total amount transferred for each relevant year to the Commission."~~

7. In Article 32, paragraph 4 is replaced by the following:

- "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 preparatory, running and animation costs under points (a), (d) and (e) of Article 35(1) for the community-led local development strategy."

8. In Article 34, paragraph 3 is replaced by the following:

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

- (a) building the capacity of local actors **including potential beneficiaries** to develop and implement operations including fostering their project **preparatory and** management capabilities;
- (b) drawing up non-discriminatory and transparent selection procedure which avoids conflict of interest, ensures that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allows selection by written procedure;
- (c) drawing up and approving a non-discriminatory objective criteria for the selection of operations that ensure coherence with the community-led local development strategy by prioritising those operations according to their contribution to meeting that strategy's objectives and targets;
- (d) preparing and publishing calls for proposals or an ongoing project submission procedure;
- (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.

Where local action groups carry out tasks not covered by points (a) to (g) that fall under the responsibility of the managing or, the certifying authority or of the paying agency, those local action groups shall be designated as intermediate bodies in accordance with the fund specific rules."

9. In Article 36, paragraph 3 is replaced by the following:

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

10. Article 37 is amended as follows:

(a) In paragraph 2, point (c) is replaced by the following:

"(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~~ **extent** of, differentiated treatment **as referred to in Article 43a** 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 differentiated treatment, such as a competitive or appropriately independent assessment process;"

(b) The first subparagraph of paragraph 3 is replaced by the following:

"The ex-ante assessment referred to in paragraph 2 may take into account the ex-ante evaluation carried out in accordance with point (h) of Article 202(1) of the Financial Regulation and 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."

(ba) Paragraph 8 is replaced by the following:

**"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, including from the European Fund for Strategic Investments, in accordance with applicable Union State aid rules, as appropriate. 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."**

11. Article 38 is amended as follows:

(a) In paragraph 1, the following point (c) is inserted:

**"(c) financial instruments ~~allowing for the combination of~~ combining such contribution with EIB financial products under the European Fund for Strategic Investment in accordance with Article 39a."**

(b) Paragraph 4 is amended as follows:

(i) The first subparagraph is amended as follows:

– points (b) and (c) are replaced by the following:

**"(b) entrust implementation tasks, through the direct award of a contract, to:**

**(i) the EIB;**

**(ii) an international financial institution in which a Member State is a shareholder;**

(iii) a publicly-owned bank or ~~financial~~ institution, established as a legal entity carrying out financial activities on a professional basis, which fulfils all the following conditions:

- there is no direct private capital participation, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the relevant bank or institution, **and with the exception of forms of private capital participation which confer no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds;**
- operates under a public policy mandate given by the relevant authority of a Member State at national or regional level, ~~to carry~~ **which includes carrying out, as all or part of its activities,** economic development activities contributing to the objectives of the ESI Funds
- carries out, **as all or part of its activities,** ~~its~~ economic development activities **contributing to the objectives of the ESI Funds** in regions, policy areas ~~and~~ or sectors for which access to funding from market sources is not generally available or sufficient;
- operates ~~on a non-profit maximisation basis in order to~~ **without primarily focussing on maximising profits but** ensures a long-term financial sustainability **for its activities;**



- is ~~not a direct recipient of deposits from the public;~~ and **ensures that this direct award of contract does not provide any direct or indirect benefit for commercial activities by way of appropriate measures in line with applicable law; and**
  - is subject to the supervision of an independent authority in accordance with ~~national~~ **applicable** law.
- (c) entrust implementation tasks to another body governed by public or private law; or";
- the following point (d) is added:
    - "(d) 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.";

- (ii) The second subparagraph is replaced by the following:

["When implementing the financial instrument, the bodies referred to in points (a) to (d) 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, tax fraud and tax evasion. Those bodies shall not make use of or engage in ~~tax avoidance structures, in particular aggressive tax planning schemes or~~ practices not complying with **EU tax good governance criteria principles**, as set out in ~~EU~~ **the Union** legislation ~~including Commission recommendations and communications or any formal notice by the latter~~. **In this context, the bodies implementing financial instruments shall take the utmost account of the policies of the Union.** They shall not be established and, in relation to the implementation of the financial ~~operations~~ **instruments** shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial ~~operations~~ **instruments**. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial ~~operations~~ **instruments** under such agreements."]

(c) Paragraphs 5 and 6 are replaced by the following:

- "5. The bodies referred to in points (a), (b) and (c) 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 Articles ~~150(2) and 202(2) and (4)~~ **31(1) and 202(1)** of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interest.
6. The bodies referred to in points (b) and (c) 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."

**(ca) The first subparagraph of paragraph 7 is amended as follows:**

- "7. Where a financial instrument is implemented under points (a), (b) and (c) of the first subparagraph of paragraph 4, subject to the implementation structure of the financial instrument, the terms and conditions for contributions from programmes to financial instruments shall be set out in funding agreements in accordance with Annex IV at the following levels:"**

(d) Paragraph 8 is replaced by the following:

"8. For financial instruments implemented under point (d) 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."

(e) **In Article 38, paragraph 10 is replaced by the following:**

**"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 and in Article 39a(5). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3)".**

12. Article 39 is amended as follows:

(a) The introductory sentence of the first subparagraph of paragraph 2 is replaced by the following:

"Member States may use the ERDF and EAFRD during the eligibility period indicated in Article 65(2) to provide a financial contribution to financial instruments referred to in point (a) of Article 38(1) of this Regulation, implemented indirectly by the Commission with the EIB pursuant to point (c)(iii) of Article 61(1) and Article 201(4) of the Financial Regulation, in respect of the following activities:"

(b) In paragraph 4:

(i) Point (a) is replaced by the following:

"(a) by way of derogation from Article 37(2), it shall be based on an ex-ante assessment at Union level carried out by the EIB and the Commission or, where more recent data is available, on **an ex-ante assessment at Union, national or regional level** ~~ex-ante assessment carried out by the participating Member State~~.

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 the relevant level, SME financing conditions and needs as well as an indication of the SME financing gap, a profile of the economic and financial situation of the SME sector at the relevant level, minimum critical mass of aggregate contributions, a range of estimated total loan volume generated by such contributions, and the added value;"

(ii) Point (b) is replaced by the following:

"(b) it shall be provided by each participating Member State as part of a separate priority axis within a programme in the case of ERDF contribution, or 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) Paragraph 7 is replaced by the following:

"7. By way of derogation from Article 41(1) and (2) as regards the financial contributions referred to in paragraph 2 of this Article, 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 under guarantee agreements 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.";

(d) Paragraph 8 is replaced by the following:

"8. At closure of the programme, the eligible expenditure as referred to in points (a) and (b) of Article 42(1) shall be the total amount of programme contributions paid to the financial instrument, corresponding:

- (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, 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).";

13. The following Article 39a is inserted:

*"Article 39a*

*Contribution of ESI Funds to financial instruments ~~allowing for the combination of~~  
**combining** such contribution with EIB financial products under  
the European Fund for Strategic Investments*

1. ~~Member States~~ **Managing authorities** may use ESI Funds to provide a contribution to financial instruments referred to in point (c) of Article 38(1) to attract additional private sector investment **and if it contributes, inter alia, to ESI Funds objectives and to the Union strategy for smart, sustainable and inclusive growth.**
2. The contribution referred to in paragraph 1 shall not exceed 25 % of the total support provided to final recipients. In the less developed regions referred to in point (b) of Article 120(3), the financial contribution may exceed 25 % where duly justified by the ~~ex-ante~~ **assessments referred to in Article 37(2) or paragraph 3 of this Article**, but shall not exceed ~~540~~ %. The total support referred to in this paragraph shall comprise the total amount of new loans and guaranteed loans as well as equity and quasi-equity investments provided to final recipients. The guaranteed loans referred to in this paragraph shall only be taken into account to the extent that ESI Funds resources are committed for guarantee contracts calculated on the basis of a prudent ex ante risk assessment covering a multiple amount of new loans.
3. By way of derogation from Article 37(2) contributions pursuant to paragraph 1 may be based on the preparatory assessment, including the due diligence, carried out by the EIB for the purposes of its contribution to the financial product under the EFSI.

4. Reporting by managing authorities under Article 46 on operations comprising financial instruments under this Article shall be based on the information kept by the EIB for the purposes of its reporting pursuant to Article 16(1) and (2) of the EFSI Regulation, supplemented by the additional information required under Article 46(2).

**Requirements under this paragraph shall allow for uniform reporting conditions in accordance with Article 46(3) of this Regulation.**

5. When contributing to financial instruments referred to in point (c) of Article 38(1) the managing authority may do any of the following:
  - (a) invest in the capital of an existing or newly created legal entity dedicated to implement investments in final recipients consistent with the objectives of the respective ESI Funds which will undertake implementation tasks;
  - (b) entrust implementation tasks ~~to a financial institution, which~~ **in accordance with Article 38(4)(b) and (c). The body entrusted with implementation tasks** shall either open a fiduciary account in its name and on behalf of the managing authority or set up a separate block of finance within the financial institution for programme contribution. 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.

For the purposes of this Article, a financial instrument may also take the form or be part of an investment platform in line with Article 2(4) of the EFSI Regulation, provided that the investment platform takes the form of a special purpose vehicle or a managed account.



[6. When implementing financial instruments under point (c) of Article 38(1), the bodies referred to in paragraph ~~2~~ **5** of this article 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, tax fraud and tax evasion. Those bodies shall not make use of or engage in ~~tax avoidance structures, in particular aggressive tax planning schemes or~~ practices not complying with **EU tax good governance criteria principles**, as set out in ~~EU the Union~~ **the Union** legislation ~~including Commission recommendations and communications or any formal notice by the latter.~~ **In this context, the bodies implementing financial instruments shall take the utmost account of the policies of the Union.** They shall not be established and, in relation to the implementation of the financial ~~operations~~ **instruments** shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial ~~operations~~ **instruments**. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial ~~operations~~ **instruments** under such agreements.]

**6a. By [OJ to enter a date: 3 months after the entry into force of the Omnibus Regulation], the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by 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 38(1)(c).**

7. The bodies referred to in paragraph 2 5 of this Article, when implementing funds of funds, may further entrust part of the implementation to financial intermediaries provided that those bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles ~~201(4)~~ **31(1)** and 202(1) ~~and (2)~~ of the Financial Regulation. The financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interest.
8. Where, **for the purpose of implementing financial instruments referred to under point (c) of Article 38(1)**, managing authorities contribute ESI Funds programme resources to an existing instrument ~~under point (c) of Article 38(1)~~, the fund manager of which has already been selected by the EIB, international financial institutions in which a Member State is a shareholder, or a publicly-owned bank or ~~financial~~ institution, established as a legal entity carrying out financial activities on a professional basis and fulfilling the conditions set out under Article 38(4)(b)(iii), they shall entrust implementation tasks to this fund manager through the award of a direct contract.
9. By way of derogation from Article 41(1) and (2), for contributions to financial instruments under paragraph 8 of this Article , applications for interim payment shall be phased in line with the payment schedule set out in the funding agreement. The payment schedule referred to in the first sentence shall correspond to the payment schedule agreed for other investors in the same financial instrument.
10. The terms and conditions for contributions pursuant to point (c) of Article 38(1) 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;
  - b) between the duly mandated representatives of the managing authority, or where applicable, between the body that implements the fund of funds, and the body that implements the financial instrument.

11. For contributions pursuant to paragraph 1 to investment platforms which receive contributions from instruments set up at Union level, consistency with State aid rules shall be ensured pursuant to Article 202(21)(c) of the Financial Regulation.
  12. In case of financial instruments referred to in point (c) of Article 38(1) which take the form of a guarantee instrument, **Member States may decide that** ESI Funds ~~may~~ contribute, **as appropriate,** to ~~junior and/or mezzanine~~ **different** tranches of portfolios of loans covered also under the EFSI's ~~Union~~ EU guarantee.
  13. For the ERDF, the ESF, the Cohesion Fund and the EMFF, a separate priority, and for the EAFRD, a separate type of operation, with a co-financing rate of up to 100% may be established within a programme to support operations implemented through financial instruments referred to in point (c) of Article 38(1).
  14. Notwithstanding Articles 70 and 93(1), contributions pursuant to paragraph 1 of this Article may be used for the purpose of giving rise to new debt and equity finance in the entire territory of the Member State without regard to the categories of region, unless otherwise provided for in the funding agreement.
  15. Before the end of 2019, the Commission shall carry out a review of the application of this Article and shall where appropriate submit to the European Parliament and Council a legislative proposal.";
14. Article 40 is amended as follows:
- (a) Paragraphs 1 and 2 are replaced by the following:
    - "1. The authorities designated in accordance with Article 124 of this Regulation and with Article 65 of the EAFRD Regulation shall not carry out on-the-spot verifications at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.

However, the designated authorities shall carry out verifications in accordance with Article 125(5) **of this Regulation and with Article 59(1) of Regulation (EU) No 1306/2013** at the level of other bodies implementing the financial instruments in the jurisdiction of their respective Member State ~~and, where necessary, at the level of the final recipient.~~

The EIB or other international financial institutions in which a Member State is a shareholder shall provide to the designated authorities control reports with each application for payment. They shall also provide to the Commission and to the designated authorities an annual audit report drawn up by the external auditors of these bodies. **The control reports and the annual audit report defined in this paragraph are without prejudice to the reporting obligations, including the performance of the financial instruments, as defined in Article 46(2) of this Regulation.**

The Commission shall be empowered to adopt an implementing act concerning the models for the control reports and the annual audit reports of the ~~first~~ **third** sub-paragraph of this paragraph.

This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

2. Without prejudice to Article 127 **of this Regulation** and Article 9 of Regulation (EU) No 1306/2013, the bodies responsible for the audit of the programmes shall not carry out audits at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.

The bodies responsible for the audit of the programmes shall carry out audits of operations and of management and control systems at the level of other bodies implementing the financial instruments in their respective Member States and at the level of the final recipients when **the** conditions of Article 40(3) are fulfilled.

The Commission may carry out audits at the level of the bodies referred to in paragraph 1, where it concludes that this is necessary to obtain reasonable assurance given the risks identified.

**2a. As regards financial instruments referred to in Article 38(1)(a) and Article 39 which were established by a funding agreement signed before [OJ to include: date of entry into force of the Omnibus Regulation], the rules of this Article applicable at the moment of the signature of the funding agreement shall apply, by derogation from paragraphs 1 and 2 of this Article."**

(b) The following paragraph 5a is inserted:

"5a. By way of derogation from paragraph 4 of Article 143 of this Regulation and from the second subparagraph of Article 56 of Regulation (EU) No 1306/2013, in operations comprising financial instruments, the contribution cancelled in accordance with paragraph 2 of Article 143 of this Regulation or in accordance with the first subparagraph of Article 56 of Regulation (EU) No 1306/2013, as a result of an individual irregularity, may be reused within the same operation under the following conditions:

- (a) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the final recipient, the contribution cancelled may be reused only for other final recipients within the same financial instrument;
- (b) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the financial intermediary within a fund of funds, the contribution cancelled may be reused only for other financial intermediaries ~~or for other final recipients within the same financial instrument.~~

Where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the body implementing funds of funds, **or at the level of the body implementing financial instruments where financial instrument is implemented through a structure without a fund of funds**, the contribution cancelled may not be reused within the same operation.

In case a financial correction is made for a systemic irregularity, the contribution cancelled may not be reused for any operation affected by the systemic irregularity."

(c) Paragraph 4 is replaced by the following:

**"4. By [OJ to enter a date: 3 months after the entry into force of the Omnibus Regulation], the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by laying down additional specific rules concerning the management and control of financial instruments referred to in point (b) and (c) of Article 38(1), regarding the types of controls to be performed by managing and audit authorities, arrangements for keeping supporting documents and elements to be evidenced by supporting documents."**

15. In Article 41, in paragraph 1, the introductory sentence of the first subparagraph is replaced by the following:

"1. As regards financial instruments referred to in point (a) and (c) of Article 38(1) and financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a), **(b)** and ~~(bc)~~ of Article 38(4), phased applications for interim payments shall be made for programme 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:"

**15a. In Article 41, paragraph 2, is replaced by the following:**

**"2. As regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with point (d) 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)."**

**15b. The first sentence of Article 42(3) is replaced by the following:**

**"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 2018, 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."**

**16. In Article 42, in paragraph 5, the first subparagraph is replaced by the following:**

**"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 point (c) of Article 38(1) and points (a), (b) and (bc) 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."**

17. The following Article 43a is inserted:

*"Article 43a*

*Differentiated treatment of investors*

1. Support from the ESI Funds to financial instruments invested in final recipients and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by those investments, which are attributable to the support from the ESI Funds, may be used for differentiated treatment of ~~private~~ investors **operating under the market economy principle**, as well as the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. Such differentiated treatment shall be justified by the need to attract private counterpart resources **and leverage public funding**.
- 21a. The assessments referred to in Article 37(2) and Article 39a(3) shall include, as **appropriate, an assessment of the need for, and the level extent of, differentiated treatment as referred to in paragraph 1 shall of this Article and/or a description of the mechanism which will be established in the ex-ante assessment used to establish the need for, and extent of, such differentiated treatment.**
32. The differentiated treatment shall not exceed what is necessary to create the incentives for attracting private counterpart resources. It shall not over-compensate ~~private~~ investors **operating under the market economy principle**, and the EIB when using the EU guarantee according to Regulation (EU) 2015/1017. The alignment of interest shall be ensured through an appropriate sharing of risk and profit.
43. Differentiated treatment of ~~private~~ investors **operating under the market economy principle**, shall be without prejudice to the Union State aid rules."



18. In Article 44, paragraph 1 is replaced by the following:

"1. Without prejudice to Article 43a, 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, to cover the losses in the nominal amount of the ESI Funds contribution to the financial instrument resulting from negative interest, if such losses occur despite active treasury management by the bodies implementing financial instruments.
- (c) where applicable, reimbursement of management costs incurred and payment of management fees of the financial instrument."

19. In Article 46, in paragraph 2, ~~in the first subparagraph, points (g) and (h) are replaced by the following:~~

**(a) Point (c) is replaced by the following:**

**"(c) identification of the bodies implementing financial instruments, and the bodies implementing funds of funds where applicable, as referred to under points (a), (b) and (c) of Article 38(1);"**

**(b) Points (g) and (h) are replaced by the following:**

- "(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 and amounts used for differentiated treatment as referred to in Article 43a;
- (h) progress in achieving the expected leverage effect of investments made by the financial instrument and participations;"

**19a. In Article 49, paragraph 4 is amended as follows:**

**"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 may also make observations on the visibility of support from the ESI Funds and awareness about their results. The monitoring committee shall monitor actions taken as a result of its observations."**

**19b. In Article 51, paragraph 1 is amended as follows:**

**"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. The meeting shall also review the programme's communication and information activities, in particular the results and effectiveness of measures taken to inform the public about the results and added value of support from the ESI Funds."**

20. In Article 56, paragraph 5 is deleted;

21. In Article 57, paragraph 3 is ~~deleted~~ replaced by the following:

**"3. Provisions under paragraph 1 and 2 of this Article shall also apply to the ESIF contributions to dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4)";**

22. In Article 58, paragraph 1 is amended as follows:

(a) The reference to "Article 60 of the Financial Regulation" is replaced by "Article 149 of the Financial Regulation".

(aa) Point (f) is amended as follows:

**"(f) actions to disseminate information, support networking, carry out communication activities with particular attention to the results achieved with the support of ESI Funds and their added value, raise awareness and promote cooperation and exchange of experience, including with third countries;**

**The Commission shall dedicate at least 15% of the resources mentioned in this Article 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, by extending the knowledge base on results, in particular through more effective data collection and dissemination, evaluations and reporting, and especially by highlighting the contribution of ESI Funds to improving people's lives, and increasing the visibility of support from ESI Funds as well as raising awareness about the results and the added value of such support. Information, communication and visibility measures on results and added value of support from the ESI Funds, with particular focus on operations, shall be continued after the closure of the programmes, where appropriate. They 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."**

- (b) At the end of the first paragraph, the following subparagraph is added:

"Depending on the purpose, the measures referred to in this Article can be financed either as operational or administrative expenditure."

23. Article 59 is amended as follows:

- (a) The following paragraph 1a is added:

"Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds."

- (b) The following paragraph 3 is added:

"Without prejudice to the second paragraph, Member States may implement actions referred to in the first paragraph through the direct award of a contract, to:

- (i) the EIB;
- (ii) an international financial institution in which a Member State is a shareholder;
- (iii) a publicly-owned bank or financial institution, as defined in point (b) (iii) of Article 38(4).";

24. Article 61 is amended as follows:

(a) In paragraph 1, the first indent is replaced by the following:

**"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, with the exception of cost-savings resulting from the implementation of energy efficiency measures, shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies."**

(ab) In paragraph 3, a new point (aa) is inserted after point (a):

"application of a flat rate net revenue percentage established by a Member State for a sector or sub-sector not covered under point (a). Before the application of the flat rate the responsible audit authority shall ~~satisfy itself~~ **verify** that the flat rate has been established according to a fair, equitable and verifiable method based on historical data or objective criteria.";

(bc) Paragraph 5 is replaced by the following:

"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 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."

(ed) Point (h) of paragraph 7 is replaced by the following:

"operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation";

(e) **Paragraph 8 is replaced by the following:**

**"8. In addition, paragraphs 1 to 6 shall not apply to operations for which support under the programme constitutes State aid within the meaning of Article 2(13) of this Regulation."**

25. Article 65 is amended as follows:

(a) In paragraph 8:

(i) Point (h) is replaced by the following:

"(h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation with the exception of those operations for which reference is made to this paragraph under the EMFF Regulation; or"

(ii) Point (i) is replaced by the following:

"(i) operations for which the total eligible cost does not exceed EUR 100 000.";

(b) Paragraph 11 is replaced by the following:

"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 declared in a payment application for one of the ESI Funds **is not declared for** ~~does not receive~~ support from another Fund or Union instrument, or support from the same Fund under another programme. The amount of expenditure to be entered into a payment application of an ESI Fund may be calculated for each ESI Fund **and for the programme or programmes concerned** on a pro rata basis in accordance with the document setting out the conditions for support."

26. Article 67 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Point (c) is replaced by the following:

"lump sums;"

(ii) Point (e) is inserted:

"(e) financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes. ~~The detailed modalities concerning the financing conditions and their application shall be set as laid out in the delegated acts adopted in accordance with the empowerment provided for in~~ **in accordance with paragraph 5a of this Article.**

**In case of the financing form referred to in point (e) of the first subparagraph, audit shall exclusively aim at verifying that the conditions for reimbursement have been fulfilled."**

(b) The following paragraph 2a is inserted:

"2a. For an operation or projects not falling under the first sentence of paragraph 4 and which receive support from the ERDF and the ESF, grants and repayable assistance for which the public support does not exceed EUR 100 000 shall take the form of standard scales of unit costs, lump sums or flat rates, except for operations receiving support within the framework of a State aid scheme that does not constitute *de minimis* aid."

**Where flat rate financing is used, the categories of costs to which the flat rate is applied may be reimbursed in accordance with point (a) of paragraph 1.**

**For operations supported by the EAFRD, ERDF or the ESF, where the flat rate referred to in the first paragraph of Article 68b is used, the allowances and salaries paid to participants may be reimbursed in accordance with point (a) of paragraph 1 of this Article.**

**This paragraph shall be subject to the transitional provisions set out in paragraph 7 of Article 152."**

(ba) Paragraph 4 is replaced by the following:

"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 points (a) and (e) 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 for the whole operation or project forming a part of an operation."**



(c) Paragraph 5 is amended as follows:

(i) Point (a) is replaced by the following:

"(a) a fair, equitable and verifiable calculation method based on:

- (i) statistical data ~~or~~, other objective information; **or an expert judgement; or**
- (ii) the verified historical data of individual beneficiaries; **or**
- (iii) the application of the usual cost accounting practices of individual beneficiaries;" ~~or~~

**(ivii) The following point (a)(bis) is added:**

**"(a)(bis)** draft budgets established on a case by case basis and agreed ex ante by the managing authority **or in the case of EAFRD the authority responsible for the selection of operations**, where the public support does not exceed EUR 100 000;"

(iii) The following ~~sub~~paragraph is added:

**"5a.** The Commission ~~shall be~~ **is** empowered to adopt delegated acts in accordance with Article 149 ~~concerning~~ **supplementing this Regulation with regard to** the definition of the standard scales of unit costs or the flat rate financing referred to in points (b) and (d) of the first subparagraph of paragraph 1, the related methods referred to in point (a) of ~~the first subparagraph of this paragraph 5~~ and the form of support referred to in point (e) of the first subparagraph of paragraph 1, **by specifying detailed modalities concerning the financing conditions and their application.**";

27. Article 68 is replaced by the following:

*"Article 68*

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

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 is empowered to adopt delegated acts in accordance with Article 149 ~~concerning to supplement the definition of provisions on~~ the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.";

28. The following Articles 68a and 68b are inserted:

*"Article 68a*

*Staff costs concerning grants and repayable assistance*

- 1. Direct staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation, **without there being a requirement for the Member State to perform a calculation to determine the applicable rate provided that the direct costs of the operation do not include public works contracts which exceed in value the threshold defined in point (a) of Article 4 of Directive 2014/24/EU.**

2. For the purposes of determining staff costs, ~~an~~ the hourly rate may be calculated by dividing the latest documented annual gross employment costs by 1720 hours for persons working full time, or by a corresponding pro-rata of 1720 hours, for persons working part-time.
3. **When applying the hourly rate calculated in accordance with paragraph 2, ~~the~~ total number of hours declared per person for a given year shall not exceed the number of hours used for the calculations of ~~the~~at hourly rate.**

**The first subparagraph shall not apply to programmes under the European territorial cooperation goal for staff costs related to persons who work on a part-time assignment on the operation.**

34. Where annual gross employment costs are not available, they may be derived from the available documented gross employment costs or from the contract for employment, duly adjusted for a 12 month period.
45. Staff costs related to individuals who work on part-time assignment on the operation ~~with fixed hours per month~~ may be calculated as a fixed percentage of the gross employment costs, in line with a fixed percentage of time worked on the operation **per month**, with no obligation to establish a separate working time registration system. The employer shall issue a document for ~~each~~ employees setting out **that the** fixed percentage of time for working on the operation."

~~The first subparagraph shall not apply to programmes under the European territorial cooperation goal.~~

*Article 68b*

*Flat rate financing for costs other than staff costs*

1. A flat rate of up to 40% of eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation without a requirement for the Member State to execute any calculation to determine the applicable rate.

*[new para.]* For operations supported by the ESF, **the ERDF or the EAFRD**, salaries and allowances paid to participants shall be considered additional eligible cost not included in the flat rate."

2. The flat rate referred to in paragraph 1 of this Article shall not be applied ~~where~~ **to** staff costs ~~have been~~ calculated on the basis of a flat rate."

29. Article 70 is ~~amended~~ **replaced** as follows:

(a) ~~the following paragraph 1a is inserted:~~

**"Article 70**

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

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

~~"1a.~~ Operations concerning the provision of services to citizens or businesses which cover the whole territory of a Member State shall be considered as being located in all programme areas within a Member State. In such cases, expenditure shall be allocated to the concerned programme areas on a pro-rata basis, based on objective criteria ~~other than the budget allocation to the programme areas.~~

~~This paragraph~~ **The second subparagraph** does not apply to the national programme referred to in Article 6(2) of regulation (EU) No 1305/2013 and to the specific programme for the establishment and the operation of the national rural network referred to in Article 54 (1) of Regulation (EU) No 1305/2013.;

~~(b) in paragraph 2 point (b) is replaced by the following:~~

- 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 **from the ERDF, Cohesion Fund, EAFRD or EMFF** allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund, EAFRD or EMFF at the level of the priority at the time of **adoption of the programme** ~~the agreement of the monitoring committee referred to in point (e);~~
  - (c) the monitoring committee has given its agreement to the operation or types of operations concerned;**
  - (d) the obligations of the authorities 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.**

~~(c) the following paragraph 2a is inserted:~~

~~2a. For the Funds and the EMFF w~~**Where operations financed from the Funds and the EMFF are** implemented outside the programme area in accordance with paragraph 2 **and** have benefits both outside and within the programme area **such** expenditure shall be allocated to these areas on a pro rata basis based on objective criteria ~~other than the budget allocation to the programme areas.~~

*[new subpara.]* **Where operations concern the thematic objective referred to in point (1) of the first paragraph of Article 9 and are implemented outside the Member State but within the Union only points (b) and (d) shall apply.**

~~(d) paragraph 3 is replaced by the following:~~

3. For operations concerning technical assistance or **[information,] communication [and visibility measures]** and promotional activities, and for operations under the thematic objective **referred to in point (1) of the first paragraph of Article 9** ~~of strengthening research, technological development and innovation,~~ 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~~ **expenditure is necessary for the satisfactory implementation of the operation.**

~~In addition, for operations under the thematic objective of strengthening research, technological development and innovation, the conditions set out in point (b) of paragraph 2 shall be 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."**

30. In Article 71, paragraph 4 is replaced by the following:

"4. Paragraphs 1, 2 and 3 shall not apply to contributions to or by financial instruments or for lease purchase under Article 45(2)(b) of Regulation (EU) No 1305/2013 nor to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.";

[31. In Article 75, paragraph 1, the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 62(5), **(5a) and (5b)** of the Financial Regulation".]

**31a. In Article 75, the following paragraph 2a is inserted:**

**"2a. The Commission shall provide the competent Member State authority with:**

- (a) the draft audit report from the on-the-spot audit or check within 3 months' time from the end date of the respective on-the-spot audit or check. The aforementioned time limit shall not include the period which starts on the date following the date on which the Commission sends its request for additional information to the Member State and lasts until the Member State responds to the request;**
- (b) the final audit report within 3 months' time from the date of receiving a complete reply from the competent national authority to the draft audit report from the respective on-the-spot audit or check;**
- (c) the reports mentioned under points (a) and (b) shall be made available within the aforementioned time limits in at least one of the official languages of the Union.**

**Paragraph 2a shall not be applicable to the European Agricultural Fund for Rural Development."**

32. Article 76 is amended as follows:

- (a) In the second subparagraph the reference to "Article 84(2) of the Financial Regulation" is replaced by "Article 108(1) of the Financial Regulation".
- (b) In the fourth subparagraph the reference to "Article 16 of the Financial Regulation" is replaced by "Article 15 of the Financial Regulation".

33. In Article 79, paragraph 2, the reference to "Article 68(3) of the Financial Regulation" is replaced by "Article 80(2) of the Financial Regulation".

[34. In Article 83, paragraph 1, point (c) the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 62(5), **(5a) and (5b)** of the Financial Regulation".]

35. In Article 84 the reference to "Article 59(6) of the Financial Regulation" is replaced by "Article 62(6) of the Financial Regulation".

36. Article 98, paragraph 2 is replaced by the following:

"The ERDF and the ESF may finance, in a complementary manner and subject to a limit of 10 % of Union funding for each priority axis of an operational programme, a part of an operation for which the costs are eligible for support from the other Fund on the basis of rules applied to that Fund, provided that such costs are necessary for the satisfactory implementation of the operation and are directly linked to it."



37. Article 102 is amended as follows:

(a) Paragraph 6 is replaced by the following:

"6. Expenditure relating to a major project may be included in a payment application after the submission for approval referred to in paragraph 2. Where the Commission does not approve the major project selected by the managing authority, the declaration of expenditure following the withdrawal of the application by the Member State or the adoption of the Commission decision shall be rectified accordingly.";

(b) The following paragraph 6a is added:

"6a. Where the major project is appraised by independent experts pursuant to paragraph 1, expenditure relating to that major project may be included in a payment application after the managing authority has informed the Commission of the submission of the information required under Article 101 to the independent experts.

**An independent quality review shall be delivered within 6 months of the submission of that information to the independent experts.**

~~Where the independent quality review has not been notified to the Commission within 6 month of the submission of that information to the independent experts or where the relevant appraisal is negative, the~~ The corresponding expenditure shall be withdrawn and the declaration of expenditure shall be rectified accordingly **in the following cases:**

**(a) where the independent quality review has not been notified to the Commission 3 months after the lapse of the time period referred to in the first subparagraph; or**

**(b) where the submission of the information is withdrawn by the Member State; or**

**(c) where the relevant appraisal is negative."**

38. In Article 104, paragraphs 2 and 3 are replaced by the following:

"2. The public expenditure allocated to a joint action plan shall be a minimum of EUR 5 000 000 or 5 % of the public support of the operational programme or one of the contributing programmes, whichever is lower.

3. Paragraph 2 shall not apply to operations supported under the YEI and to the first Joint Action Plan submitted by a Member State under the Investment for Jobs and Growth Goal and the first Joint Action Plan submitted by a programme under the European territorial Cooperation goal.";

39. In Article 105, in paragraph 2, the second sentence is deleted;

40. In Article 106, the first subparagraph is amended as follows:

(a) Point 1 is replaced by the following:

"(1) a description of the objectives of the joint action plan and how it contributes to the objectives of the programme or to the relevant country-specific recommendations and the broad guidelines of the economic policies of the Member States and of the Union under Article 121(2) TFEU and the relevant Council recommendations which the Member States are to take into account in their employment policies under Article 148(4) TFEU;"

(b) Point 2 is deleted.

(c) Point 3 is replaced by the following:

"(3) a description of the projects or types of projects envisaged, together with the milestones, where relevant, and the targets for outputs and results linked to the common indicators by priority axis, where relevant.";

~~(d) Points 6 and 7 are deleted~~

**(d) Point 6 is replaced by the following:**

**"(6) confirmation that it will contribute to the approach to promoting equality between men and women, as set out in the relevant programme or Partnership Agreement";**

**(da) Point 7 is replaced by the following:**

**"(7) confirmation that it will contribute to the approach on sustainable development, as set out in the relevant programme or Partnership Agreement";**

(e) Point 8 is replaced by the following:

"(8) its implementing provisions, including the following:

- (a) information on the selection of the joint action plan by the managing authority in accordance with Article 125(3);
- (b) the arrangements for steering the joint action plan, in accordance with Article 108;
- (c) the arrangements for monitoring and evaluating the joint action plan including arrangements ensuring the quality, collection and storage of data on the achievement of milestones, outputs and results."

(f) In point 9, letter (b) is deleted;

**(g) In point 9, letter (a) is amended as follows:**

(a) the costs of achieving milestones, outputs and result targets ~~with reference to point (2)~~, based, **in the case of standard scale of unit costs and lump sums**, on the methods set out in Article 67(5) of this Regulation and in Article 14 of the ESF Regulation;

41. In Article 107, paragraph 3 is replaced by the following:

"3. The decision referred to in paragraph 2 shall indicate the beneficiary and the objectives of the joint action plan, the milestones, where relevant, and targets for outputs and results, the costs of achieving those milestones and targets for outputs and result, and the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure, the implementation period of the joint action plan and, where relevant, the geographical coverage and target groups of the joint action plan.";

42. In Article 108, in paragraph 1, the first subparagraph is replaced by the following:

"The Member State or the managing authority shall set up a steering committee for the joint action plan, which may be distinct from the monitoring committee of the relevant operational programmes. The steering committee shall meet at least twice a year and shall report to the managing authority. Where relevant, the managing authority shall inform the relevant monitoring committee of the results of the work carried out by the steering committee and the progress of the implementation of the joint action plan in accordance with point (e) of Article 110(1) and point (a) of Article 125(2)."

43. Article 109, paragraph 1 is replaced by the following:

"Payments to the beneficiary of a joint action plan shall be treated as lump sums or standard scales of unit costs."

44.—In Article 110, is amended as follows:

(a) In paragraph 1, point (c) is replaced by the following:

**"(c) implementation of the communication strategy, including information and communication measures and of measures to enhance the visibility of the Funds;"**

(b) In paragraph 2, point (a) is replaced by the following:

**"(a) the methodology and criteria used for selection of operations, without prejudice to except where these are approved by local action groups in accordance with Article 34(3)(c);"**

45. Article 114 is amended as follows:

(a) Paragraph 1 is replaced by the following:

**"1. An evaluation plan shall be drawn up by the managing authority or Member State for one or more operational programmes. The evaluation plan shall be submitted to the monitoring committee no later than one year after the adoption of the operational programme. In the cases of dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) adopted before this Regulation has entered into force, the evaluation plan shall be submitted to the monitoring committee no later than one year after the date this Regulation enters into force.;"**

(b) Paragraph 4 is deleted.

**45a. The title of Chapter II is replaced by the following:**

**"Information, ~~and~~ communication and visibility"**

46. Article 115, paragraph 3 is replaced by the following is amended as follows:

(a) The title of the Article is replaced by:

*"Article 115  
Information, communication and visibility"*

(b) In paragraph 1, point (d) is replaced by the following:

**"(d) publicising to Union citizens the role and achievements of cohesion policy and of the Funds through measures to enhance the visibility of ~~on~~ the results and impact of Partnership Agreements, operational programmes and operations."**

(c) Paragraph 3 is replaced by the following:

**"3. Detailed rules concerning information, communication and visibility for the public and information measures for potential beneficiaries and for beneficiaries are laid down in Annex XII."**

46a. In Article 116, paragraph 3 is amended as follows:

**"3. By way of derogation from the third subparagraph of paragraph 2, the managing authority shall inform the monitoring committee or committees responsible at least once a year on the progress in the implementation of the communication strategy as referred to in point (c) of Article 110(1) and on its analysis of the results as well as on the planned information and communication activities and measures that will enhance visibility of the Funds to be carried out in the following year. The monitoring committee shall give an opinion on the planned activities for the following year including on ways to increase the effectiveness of communication activities aimed at the general public."**

46b. In Article 117, paragraph 4 is amended as follows:

"4. Union networks comprising the members designated by the Member States shall be set up by the Commission to ensure exchange of information on the results of the implementation of the communication strategies, the exchange of experience in implementing the information and communication measures, the exchange of good practices and to enable joint planning or coordination of communication activities between the Member States and with the Commission where appropriate. The networks shall at least once a year debate and assess the effectiveness of information and communication measures, propose recommendations to enhance the outreach and impact of communication activities and to raise awareness about their results and added value."

47. Article 119 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

"The amount of the Funds allocated to technical assistance **in a Member State** shall be limited to 4 % of the total amount of the Funds allocated to operational programmes **under the Investment for jobs and growth goal** at the time of the adoption of the operational programmes ~~in a Member State of the Investment for jobs and growth goal.~~"

(b) In paragraph 2, the first sentence is deleted;

(c) Paragraph 4 is replaced by the following:

"4. In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations altogether relating to more than one category of region, the expenditure relating to the operations may be implemented under a priority axis combining different categories of region and attributed on a pro rata basis taking into account either the respective allocations to the different categories of regions of the operational programme or the allocation under each category of region as a share of the total allocation to the Member State.";

48. In Article 122, in paragraph 2, the fourth subparagraph is replaced by the following:

"When amounts unduly paid to a beneficiary **for an operation** cannot be recovered and this is as a result of fault or negligence on the part of a Member State, that Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds to an operation in an accounting year.";

49. In Article 123, paragraph 5, the first subparagraph is replaced by the following:

"In the case of the Funds and in the case of the EMFF, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body."

50. **Article 125, is amended as follows:**

**(a) In paragraph 3, point (c) is replaced by the following:**

**"(c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution as well as requirements regarding information, communication and visibility;"**



50. ~~Article 125, (b)~~ Paragraph 4 is amended as follows:

(a) Point (a) is replaced by the following:

"(a) verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the operational programme and the conditions for support of the operation and,

(i) where costs are to be reimbursed pursuant to point (a) of the first subparagraph of Article 67, that the amount of expenditure declared by the beneficiaries in relation to those costs has been paid;

(ii) In the case of costs reimbursed pursuant to points (b), (c), **(d)** and ~~(de)~~ of the first subparagraph of Article 67(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;"

[(b) in point (e), the reference to "points (a) and (b) of Article 59(5) of the Financial Regulation" is replaced by "points (a) and (b) of Article 62(5) **and Article 62(5a) and (5b)** of the Financial Regulation".]

[51. In point (b) of the first subparagraph of Article 126 the reference to "point (a) of Article 59(5) of the Financial Regulation" is replaced by "point (a) of Article 62(5) **and Article 62(5a)** of the Financial Regulation".]

[52. Article 127 is amended as follows:

(a) in paragraph 1, third subparagraph, the reference to "the second subparagraph of Article 59(5) of the Financial Regulation" is replaced by "~~the second subparagraph of~~ Article 62(**5b**) of the Financial Regulation".

(b) in point (a) of paragraph 5, the reference to "the second subparagraph of Article 59(5) of the Financial Regulation" is replaced by "~~the second subparagraph of~~ Article 62(**5b**) of the Financial Regulation".]

**52a. Article 131 is replaced by the following:**

***"Article 131  
Payment applications***

- 1. Payment applications shall include, for each priority:
  - (a) the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations, as entered in the accounting system of the certifying authority;**
  - (b) the total amount of public expenditure incurred in implementing operations, as entered in the accounting system of the certifying authority.****

**With regard to the amounts to be included in payment applications for the form of support under point (e) of the first subparagraph of Article 67(1) the payment applications shall include the elements set out in the delegated acts adopted in accordance with Article 67(5a) and use the relevant model for payment applications set out in the implementing acts adopted in accordance with Article 132(6).**

- 2. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c), (d) and (e) of the first subparagraph of Article 67(1), under Article 68, Article 68a, Article 68b, Article 69(1) and Article 109 of this Regulation and under Article 14 of the ESF Regulation. For those forms of support, the amounts included in a payment application shall be the costs calculated on the applicable basis.**

- 3. In the case of aid schemes under Article 107 TFEU, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), paid by the beneficiary to the body receiving the aid.**
  
- 4. By way of derogation from paragraph 1, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), paid by the beneficiary to the body receiving the aid under the following cumulative conditions:**
  - (a) those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or be covered by a facility provided as a guarantee by a public entity or by the Member State;**
  
  - (b) those advances do not exceed 40 % of the total amount of the aid to be granted to a beneficiary for a given operation or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), of the total amount of the aid to be granted to the body receiving the aid as part of a given operation.**
  
  - (c) those advances are covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), expenditure paid by the body receiving the aid in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within three years following the year of the payment of the advance or on 31 December 2023, whichever is earlier, failing which the next payment application shall be corrected accordingly.**

5. Each payment application which includes advances of the type referred to in paragraph 4 shall separately disclose the total amount paid from the operational programme as advances, the amount which has been covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), by the body receiving the aid within three years of the payment of the advance in accordance with point (c) of paragraph 4, and the amount which has not been covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to Article 2(10), by the body receiving the aid, and for which the three year period has not yet elapsed."

~~[53. In Article 134, in paragraph 1a, second subparagraph, the reference to "point (c) of Article 21(3) of the Financial Regulation" is replaced by "point (c) of Article 20(3) of the Financial Regulation".]~~

[54. In Article 137, in paragraph 1, the reference to "point (a) of Article 59(5) of the Financial Regulation" is replaced by "point (a) of Article 62(5) **and Article 62(5a)** of the Financial Regulation".]

55. In Article 138, the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 62(5) of the Financial Regulation".

~~[56. In Article 139, in paragraph 7, the reference to "Article 177(3) of the Financial Regulation" is replaced by "point (c) of Article 20(3) of the Financial Regulation".]~~

57. In Article 140, in paragraph 3, the following sentence is added:

"Where documents are kept on commonly accepted data carriers in accordance with the procedure laid down in paragraph 5, no originals shall be required."

[58. In Article 145, in paragraph 7, point (a), the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 62(5), **(5a) and (5b)** of the Financial Regulation".]

[59. In Article 147, in paragraph 1, the reference to "Article ~~73~~ 78 of the Financial Regulation" is replaced by "Article ~~89~~ 96 of the Financial Regulation".]

**59a. In Article 148, the first paragraph is replaced by the following:**

**"1. Operations for which the total eligible expenditure does not exceed EUR 400 000 for the ERDF and the Cohesion Fund, EUR 300 000 for the ESF or EUR 200 000 for the EMFF shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Other operations shall not be subject to more than one audit per accounting year by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors, provided that the results of the audit work performed by the European Court of Auditors for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.**

**By derogation from the first subparagraph, operations for which the total eligible expenditure is between EUR 200 000 and EUR 400 000 for the ERDF and Cohesion Fund, between EUR 150 000 and EUR 300 000 for the ESF and between EUR 100 000 and EUR 200 000 for the EMFF may be subject to more than one audit, if the audit authority concludes, based on its professional judgment, that it is not possible to issue/draw up an audit opinion on the basis of statistical or non-statistical sampling methods referred to in paragraph 1 of Article 127 without carrying out more than one audit of the respective operation."**

**(59b) In Article 149, paragraph 2 is replaced by the following:**

**"2. The power to adopt delegated acts referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61 (3), Articles 63(4), 64(4) and 67(5a) the second subparagraph of Article 68(1), the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8) and Article 144(6) shall be conferred on the Commission from 21 December 2013 until 31 December 2020."**

60. In Article 152, a new paragraph 47 is added:

~~"Where a call for proposal is launched prior to the entry into force of Regulation XXX/YYY amending the present Regulation the managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) may decide not to apply the obligation set out in Article 67(2a) for a maximum of 6 months starting from the date of entry into force of Regulation XXX/YYY. Where the document setting out the conditions for support is provided to the beneficiary within a period of 6 months starting from the date of entry into force of Regulation XXX/YYY the managing authority may decide not to apply those amended provisions."~~

**"7. The managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) may decide not to apply the obligation set out in Article 67(2a) for a maximum period of 12 months starting from the date of entry into force of Regulation XXX/YYY.**

**Where the managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) considers that the obligation set out in Article 67(2a) creates a disproportionate administrative burden, it may decide to extend the transitional period referred to in the first subparagraph for a period it considers appropriate. It shall notify the Commission of such decision before the expiration of the transitional period.**

**The first and second subparagraphs do not apply to grants and repayable assistance supported by the ESF for which the public support does not exceed EUR 50 000."**

61. Annex IV is amended as follows:

(a) The introductory sentence of section 1 is replaced by the following:

"Where a financial instrument is implemented under Article 39a and points (a), ~~and~~ (b) **and (c)** of Article 38(4), the funding agreement shall include the terms and conditions for making contributions from the programme to the financial instrument and shall include at least the following elements:";

(b) Point (i) of section 1 is replaced by the following:

"provisions regarding the re-utilisation of resources attributable to the support from the ESI Funds until the end of the eligibility period in compliance with Article 44 and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a;";

(c) Point (c) of section 2 is replaced by the following:

"(c) the use and re-use of resources attributable to the support of the ESI Funds in accordance with Articles 43, 44 and 45, and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a.";

62. Annex XII is amended as follows:

(-a) The title of Annex XII is amended as follows:

**"INFORMATION, ~~AND~~ COMMUNICATION AND VISIBILITY ~~ON~~  
SUPPORT FROM THE FUNDS"**

(-b) The title of Section 2 is amended as follows:

**"2. INFORMATION AND COMMUNICATION MEASURES AND  
MEASURES TO ENHANCE VISIBILITY FOR THE PUBLIC"**

(-c) In subsection 2.1, point 1 is replaced by the following:

**"1. The Member State and the managing authority shall ensure that the information and communication measures are implemented in accordance with the communication strategy, in order to improve visibility and interaction with citizens, and that those measures aim for the widest possible media coverage using various forms and methods of communication at the appropriate level and adapted, as appropriate, to technological innovation;"**

(-d) In subsection 2.1, paragraph 2, points (e) and (f) are replaced by the following:

**"(e) giving examples of operations, in particular of operations where the added value of the intervention of the Funds is particularly visible, by operational programme, on the single website or on the operational programme's website that is accessible through the single website portal; the examples should be in a widely spoken official language of the Union other than the official language or languages of the Member State concerned;**

**(f) updating information about the operational programme's implementation, including, its main achievements and results, on the single website or on the operational programme's website that is accessible through the single website portal."**



**(-e) In subsection 2.2, the first sentence of paragraph 1 is amended as follows:**

**"1. All information and communication measures and measures to enhance visibility of the Funds provided by the beneficiary shall acknowledge support from the Funds to the operation by displaying:"**

(a) In subsection 2.2 the following point is added:

"6. The responsibilities laid down under this subsection shall apply as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in Article 125(3)(c)."

(b) In subsection 3.1, in paragraph 2, point (f) is replaced by the following:

"(f) the responsibility of beneficiaries to inform the public about the aim of the operation and the support from the Funds to the operation in accordance with subsection 2.2 as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in Article 125(3)(c). The managing authority may request potential beneficiaries to propose indicative communication activities **to enhance the visibility of the Funds**, proportional to the size of the operation, in the applications."

**(c) In subsection 4, point (i) in paragraph 1 is amended as follows:**

**"(i) an annual update setting out the information and communication activities including measures to enhance visibility of the Funds to be carried out in the following year, based on, inter alia, lessons learnt on the effectiveness of such measures."**

*Article 266*  
*Amendments to Regulation (EU) No 1304/2013*

Regulation (EU) No 1304/2013 of the European Parliament and of the Council<sup>1</sup> is amended as follows:

1. In Article 13, the following subparagraph is inserted in paragraph 2:

"Where operations falling under point (a) of the first subparagraph also have a benefit for the programme area in which they are implemented, expenditure shall be allocated to these programme areas on a pro rata basis based on objective criteria ~~other than the budget allocation to the programme areas.~~"

2. Article 14 is amended as follows:

**(-a) The following paragraph -1 is inserted:**

**"-1. The general rules applicable for simplified cost options under the ESF are set in Articles 67, 68, 68a, 68b and 69 of Regulation (EU) 1303/2013."**

(a) Paragraph 2 is deleted.

**(aa) Paragraph 3 is deleted.**

(b) Paragraph 4 is deleted.

---

<sup>1</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470).

3. In Annex I, paragraph (1) is replaced by the following:

"(1) Common output indicators for participants

"Participants"<sup>1</sup> refers to persons benefiting directly from an ESF intervention who can be identified and asked for their characteristics, and for whom specific expenditure is earmarked. Other persons shall not be classified as participants. All data shall be broken down by gender.

The common output indicators for participants are:

- unemployed, including long-term unemployed\*,
- long-term unemployed\*,
- inactive\*,
- inactive, not in education or training\*,
- employed, including self-employed\*,

---

<sup>1</sup> Managing authorities shall establish a system that records and stores individual participant data in computerised form as set out in Article 125(2)(d) of Regulation (EU) No 1303/2013. The data processing arrangements put in place by the Member States shall be in line with the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31), in particular Articles 7 and 8 thereof.

Data reported under the indicators marked with \* are personal data according to Article 7 of Directive 95/46/EC. Their processing is necessary for compliance with the legal obligation to which the controller is subject (Article 7(c) of Directive 95/46/EC). For the definition of controller, see Article 2 of Directive 95/46/EC.

Data reported under the indicators marked with \*\* are a special category of data according to Article 8 of Directive 95/46/EC. Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in Article 8(2) of Directive 95/46/EC, either by national law or by decision of the supervisory authority (Article 8(4) of Directive 95/46/EC).

- below 25 years of age\*,
- above 54 years of age\*,
- above 54 years of age who are unemployed, including long-term unemployed, or inactive not in education or training\*,
- with primary (ISCED 1) or lower secondary education (ISCED 2)\*,
- with upper secondary (ISCED 3) or post-secondary education (ISCED 4)\*,
- with tertiary education (ISCED 5 to 8)\*,
- migrants, participants with a foreign background, minorities (including marginalised communities such as the Roma)\*\*,
- participants with disabilities\*\*,
- other disadvantaged\*\*.

The total number of participants will be calculated automatically on the basis of the output indicators.

These data on participants entering an ESF supported operation shall be provided in the annual implementation reports as specified in Article 50(1) and (2) and Article 111(1) of Regulation (EU) No 1303/2013.

- homeless or affected by housing exclusion\*,
- from rural areas\*<sup>1</sup>
- ~~— participants who live in jobless households\*,~~
- ~~— participants who live in jobless households with dependent children\*,~~
- ~~— participants who live in a single adult household with dependent children\*,~~

The data on participants under the two ~~first~~ above indicators will be provided in the annual implementation reports as specified in Article 50(4) of Regulation (EU) No 1303/2013. ~~The data on participants under the last three above indicators will be provided in the reports as specified in Article 50(5) of Regulation (EU) No 1303/2013.~~ The data of the ~~five~~ **two** indicators above shall be collected based on a representative sample of participants within each investment priority. Internal validity shall be ensured in such a way that the data can be generalised at the level of the investment priority."

---

<sup>1</sup> The data shall be collected at the level of smaller administrative units (local administrative units 2), in accordance with Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

*Article 271*

*Amendments to Regulation (EU) No 1309/2013*

Regulation (EU) No 1309/2013 of the European Parliament and of the Council<sup>1</sup> is amended as follows:

**-1. In Article 4, paragraph 2 is replaced by the following:**

**"2. In small labour markets or in exceptional circumstances, in particular with regard to collective applications involving SMEs, where duly substantiated by the applicant Member State, an application for a financial contribution under this Article may be considered admissible even if the criteria laid down in points (a) or (b) of paragraph 1 are not entirely met, when the redundancies have a serious impact on employment and the local, regional or national economy. The applicant Member State shall specify which of the intervention criteria set out in points (a) and (b) of paragraph 1 are not entirely met. For collective applications involving SMEs located in one region, when the Member State demonstrates that the SMEs are the main or only types of business in that region, the application may exceptionally cover SMEs operating in different economic sectors defined at NACE Revision 2 division level. The aggregated amount of contributions in exceptional circumstances may not exceed 15 % of the annual maximum amount of the EGF."**

---

<sup>1</sup> Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 (OJ 2013 L 347, 20.12.2013, p. 347).

1. In Article 6, paragraph 2 is replaced by the following:

"2. By way of derogation from Article 2, applicant Member States may provide personalised services co-financed by the EGF to up to a number of NEETs under the age of 25, or where Member States so decide under the age of 30, on the date of submission of the application, equal to the number of targeted beneficiaries, as a priority to persons made redundant or whose activity has ceased, provided that at least some of the redundancies within the meaning of Article 3 occur in NUTS 2 level regions that had youth unemployment rates for young persons aged 15 to 24 of ~~more than 25 % in 2012 and, for Member States where the youth unemployment rate had increased by more than 30 % in 2012, NUTS level 2 regions that had youth unemployment rates of more than 20 % in 2012~~ **at least 20 % based on the latest annual data available**. The support may be rendered to NEETs under the age of 25, or where Member States so decide under the age of 30, in those **same** NUTS 2 level regions ~~that had youth unemployment rates for young persons aged 15 to 24 of more than 25 % in 2012 and, for Member States where the youth unemployment rate had increased by more than 30 % in 2012, NUTS level 2 regions that had youth unemployment rates of more than 20 % in 2012.~~"<sup>1</sup>

2. In Article 11, paragraph 3 is replaced by the following:

"The tasks set out in paragraph 1 shall be performed in accordance with the Financial Regulation."

---

<sup>1</sup> A transitional provision for the ongoing projects is needed. A separate subparagraph under Article 277 of the Omnibus regulation:  
*"For financial contributions from the EGF including support to NEETs, for which the period specified in Article 16(4) of Regulation (EU) No 1309/2013 has not expired by 1 January 2018, the Commission shall assess whether personalised services provided to NEETs are eligible for co-financing by the EGF beyond 31 December 2017. Where the Commission concludes that this is the case, it shall amend the affected decisions on the financial contribution accordingly."*

3. In Article 15, paragraph 4 is replaced by the following:

"4. Where the Commission has concluded that the conditions for providing a financial contribution from the EGF are met, it shall submit a proposal to mobilise it. The decision to mobilise the EGF shall be taken jointly by the European Parliament and the Council within one month of the referral to the European Parliament and to the Council. The Council shall act by a qualified majority and the European Parliament shall act by a majority of its component members and three fifths of the votes cast.

Transfers related to the EGF shall be made in accordance with Article 30(5) of the Financial Regulation, **in principle, within a period of no more than seven days from the date of adoption of the relevant act by the European Parliament and by the Council.**"



*Article 272*  
*Amendments to Regulation (EU) No 1316/2013*

Regulation (EU) No 1316/2013 is amended as follows:

1. The following chapter is inserted:

"Chapter Va  
Blending

*Article 16a*  
*CEF Blending Facilities*

1. Blending Facilities in accordance with Article 153 of the Financial Regulation may be established under this Regulation for one or more of the CEF sectors. **All actions contributing to projects of common interest are eligible.**
2. CEF Blending Facilities shall be implemented in accordance with Article 6(3).
3. The overall contribution from the Union budget to CEF Blending Facilities shall not exceed 10% of the overall financial envelopes of the CEF as referred to in Article 5(1).

**By way of derogation from the first sub-paragraph, in the transport sector the overall contribution from the Union budget to CEF Blending Facilities shall not exceed EUR 500 000 000.**

**If the 10 % of the overall financial envelopes of the CEF referred to in Article 5(1) is not fully used for CEF Blending Facilities and/or financial instruments, the remaining amount shall be made available for and redistributed to the overall financial envelopes of the CEF referred to in Article 5(1).**

- 3a. **The amount of EUR 11 305 500 000 transferred from the Cohesion Fund, referred to in Article 5(1)(a), shall not be used to commit budgetary resources to CEF Blending Facilities.**

4. Support provided under the CEF Blending Facility in the form of grants **and financial instruments** shall comply with the eligibility and conditions for financial assistance set out in Article 7. The amount of financial assistance to be granted to the Blending operations supported by means of a CEF Blending Facility shall be modulated on the basis of a cost-benefit analysis, **the availability of Union budget resources**, and the need to maximise the leverage of Union funding. **No grant accorded shall exceed the financing percentages laid down in Article 10.**
- 4a. **The Commission shall, in cooperation with the EIB, study the possibility for the EIB to systematically provide first loss guarantees within CEF Blending Facilities in order to allow and facilitate additionality and the participation of private co-investors in the transport sector.**
5. The Union, any Member State and other investors may contribute to CEF Blending Facilities, provided that the Commission agrees to ~~any~~ **the** specifications of the eligibility criteria of blending operations and/or the investment strategy of the facility which may be necessary due to the additional contribution **and in order to meet the requirements of this Regulation when carrying out projects of common interest.** Those additional resources shall be implemented by the Commission in accordance with paragraph 2.
6. Blending operations supported by means of a CEF Blending Facility shall be selected on the basis of maturity and shall seek sectoral diversification in accordance with Articles 3 and 4 as well as geographical balance across the Member States. They shall:
  - (a) represent European added value;
  - (b) respond to the objectives of the Europe 2020 Strategy;
  - (c) **contribute, where possible, to climate change mitigation and adaptation.**

**6a. The blending facilities shall be made available and the operations shall be selected based on the selection and award criteria in accordance with the multi-annual and annual programmes which are adopted pursuant to Article 17 in accordance with the examination procedure.**

7. Blending operations in third countries may be supported by means of a CEF ~~Transport~~ Blending Facility if those actions are necessary for the implementation of a project of common interest.

2. In Article 17, in paragraph 3, the second subparagraph is replaced by the following:

"The amount of the financial envelope shall lie within a range of 80% to 95% of the budgetary resources referred to in point (a) of Article 5(1)."

3. In Article 22 the following subparagraph is inserted after the second subparagraph:

"The above-mentioned certification of the expenditure is not mandatory for grants awarded on the basis of Regulation 283/2014 on guidelines for trans-European networks in the area of telecommunications infrastructure."

*Article 273*  
*Amendments to Regulation (EU) No 223/2014*

Regulation (EU) No 223/2014<sup>1</sup> is amended as follows:

1. In Article 9, the following paragraph 4 is added:

"4. Paragraphs 1 to 3 do not apply for the purposes of modifying elements of an operational programme falling under the respective sub-sections 3.5 and 3.6 and section 4 of the operational programme templates set out in Annex I.

A Member State shall notify the Commission of any decision falling under the first subparagraph within one month of the date of that decision. The decision shall specify the date of its entry into force, which shall not be earlier than the date of its adoption."

1a. In Article 23, paragraph 6 is replaced by the following:

**"6. An operation may receive support from one or more operational programmes co-financed by the Fund and from other Union instruments, provided that the expenditure declared in a payment application for the Fund does not receive support from another Union instrument, or support from the same Fund under another programme. The amount of expenditure to be entered into a payment application of the Fund may be calculated for the programme or programmes concerned on a pro rata basis in accordance with the document setting out the conditions for support."**<sup>2</sup>

---

<sup>1</sup> Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived

<sup>2</sup> *NB: Agreement on retroactivity of the provision regulated in Article 280 of the Omnibus Regulation.*

2. In Article 25, in paragraph 3, the following point (e) is added:

"(e) rules for the application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary."

3. Article 26 is amended as follows:

(a) In paragraph 2, points (d) and (e) are replaced by the following:

"(d) the costs of partner organisations for collection, transport, storage and distribution of food donations and directly related awareness raising activities;

(e) the costs of accompanying measures undertaken and declared by the partner organisations delivering directly or under cooperation agreements the food and/or basic material assistance to the most deprived persons at a flat- rate of 5 % of the costs referred to in point (a); or 5 % of the value of the food products disposed of in accordance with Article 16 of Regulation (EU) No 1308/2013."

(b) The following paragraph 3a is inserted:

"3a. Notwithstanding paragraph 2, a reduction of the eligible costs referred to in paragraph (2)(a) due to non-compliance with applicable law by the body responsible for the purchase of food and/or basic material assistance, shall not lead to a reduction of the eligible costs of other bodies set out in paragraph 26(2)(c) and (e)."

3a. In Article 27, paragraph 4 is replaced by the following:

**"4. At the initiative of the Member States, and subject to a ceiling of 5 % of the Fund allocation at the time of the adoption of the operational programme, the operational programme may finance preparation, management, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementing this Regulation. It may also finance technical assistance and capacity building of partner organisations."**

4. In Article 30(2), the fourth subparagraph is replaced by the following:

"When amounts unduly paid to a beneficiary **for an operation** cannot be recovered and this is as a result of fault or negligence on the part of a Member State, that Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Fund to an operation in an accounting year."

5. Article 32, paragraph 4 is amended as follows:

(a) Point (a) is replaced by the following:

"(a) verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the operational programme and the conditions for support of the operation and,

(i) where costs are to be reimbursed pursuant to point (a) of the first paragraph of Article 25, that **the amount of** expenditure declared by the beneficiaries in relation to those costs has been paid;

(ii) **in the case of costs reimbursed pursuant to points (b), (c) and (d) of the first paragraph of Article 25, that the conditions for reimbursement of expenditure to the beneficiary have been met;"**

~~(b) the following point (aa) is inserted after point (a):~~

~~"(aa) verify that, in the case of costs reimbursed pursuant to points (b), (c) and (d) of the first subparagraph of Article 25, the conditions for reimbursement of expenditure to the beneficiary have been met."~~

6. In Article 42, paragraph 3 is replaced by the following:

"3. The payment deadline referred to in paragraph 2 may be suspended by the managing authority in either of the following duly justified cases:

- (a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of Article 32(4), have not been provided;
- (b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the suspension and the reasons for it. **The remaining time allowed for payment shall begin to run again from the date on which the requested information or documents are received or the investigation is carried out.**"

7. In Article 51, paragraph 3 is replaced by the following:

"3. The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. Where documents are kept on commonly accepted data carriers in accordance with the procedure laid down in paragraph 5, no originals shall be required."

*Article 274*  
*Amendments to Regulation (EU) No 283/2014*

Regulation (EU) No 283/2014 of the European Parliament and of the Council<sup>1</sup> is amended as follows:

1. In Article 2, **in** paragraph 1, point (e) is amended as follows:

"(e) generic services" means gateway services linking one or more national infrastructure(s) to core service platform(s) as well as services increasing the capacity of a Digital Service Infrastructure by providing access to high performance computing, storage and data management facilities."

2. In Article 5, paragraph 4 is replaced by the following:

"4. Actions contributing to projects of common interest in the field of digital service infrastructures shall be supported by:

(a) procurement,

(b) grants, and/or

(c) financial instruments as provided for in Article 5(5)."

**2a. In Article 5, the following paragraph 4a is added:**

**"4a. The overall contribution from the Union budget to financial instruments for digital service infrastructures shall not exceed 10 % of the financial envelope for the telecommunications sector referred to in point (b) of Article 5(1) of Regulation (EU) No 1316/2013."**

---

<sup>1</sup> Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).



2c. In Article 8, paragraph 1 is replaced by the following:

**"1. On the basis of information received under the third subparagraph of Article 22 of Regulation (EU) No 1316/2013, Member States and the Commission shall exchange information and best practices about the progress made in the implementation of this Regulation, including the use of financial instruments. Where appropriate, Member States shall involve local and regional authorities in the process. The Commission shall publish a yearly overview of that information and submit it to the European Parliament and to the Council."**

*Article 276*

*Amendments to Decision No 541/2014/EU*

1. In Decision No 541/2014/EU of the European Parliament and of the Council, in Article 4, the following paragraph 3 is added:

**"3. Funding programmes established by Regulations (EU) No 377/2014 and (EU) No 1285/2013 and by Decision 2013/7473/EU may contribute to the financing of the actions referred to in paragraph 1, within the scope of those programmes and in conformity with their aims and objectives. Such contributions shall be spent in compliance with Regulation (EU) No 377/2014. **The Commission shall assess before the end of the MFF the new simplified financial rules and their contribution to the objectives of the SST support framework.**"**