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Delegations will find attached the consolidated version of all partial mandates agreed by the Council preparatory bodies on the Articles of the Common Provisions Regulation.

CONSOLIDATED COUNCIL PARTIAL MANDATE ON THE COMMON PROVISIONS REGULATION (ARTICLES)

based on the partial mandates agreed at Coreper level

Common Provisions Regulation (Articles)

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TITLE I

OBJECTIVES AND GENERAL RULES ON SUPPORT

CHAPTER I

Subject-matter and definitions

Article 1

Subject-matter and scope

1. This Regulation lays down:

   (a) financial rules for the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the European Maritime and Fisheries Fund ('EMFF')[1], the Asylum and Migration Fund ('AMIF')[2], the Internal Security Fund ('ISF') and the Border Management and Visa Instrument ('BMVI') ('the Funds');

   (b) common provisions applicable to the ERDF, the ESF+, the Cohesion Fund and the EMFF.

2. This Regulation shall not apply to the Employment and Social Innovation and the Health strands of the ESF+ and to the direct or indirect management components of the EMFF, the AMIF, the ISF and the BMVI, except for technical assistance at the initiative of the Commission.

3. Articles 4 and 10, Chapter III of Title II, Chapter II of Title III, and Title VIII shall not apply to the AMIF, the ISF and the BMVI.

4. Title VIII shall not apply to the EMFF.

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1 Name to be aligned with Fund-specific Regulation.
2 Name to be aligned with Fund-specific Regulation.

5. Article 11 of Chapter II and Article 15 of Chapter III of Title II, Chapter I of Title III, Article 32 of Chapter III of Title III, Articles 33 to 37 and Article 38(1) to (4) of Chapter I, Article 39 of Chapter II, Article 45 of Chapter III of Title IV, Article 50(1) of Chapter II of Title V, Articles 67, 71, 73 and 74 of Chapter II and Chapter III of Title VI shall not apply to Interreg programmes.

6. The Fund-specific Regulations listed below may establish complementary rules to this Regulation which shall not be in contradiction with this Regulation. In case of doubt about the application between this Regulation and Fund-specific Regulations, this Regulation shall prevail:

(a) Regulation (EU) […] (the 'ERDF and CF Regulation')[3] ;

(b) Regulation (EU) […] (the 'ESF+ Regulation')[4] ;

(c) Regulation (EU) […] (the 'ETC Regulation')[5] ;

(d) Regulation (EU) […] (the 'EMFF Regulation')[6] ;

(e) Regulation (EU) […] (the 'AMIF Regulation')[7] ;

(f) Regulation (EU) […] (the 'ISF Regulation')[8] ;

(g) Regulation (EU) […] (the 'BMVI Regulation')[9] .

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3 OJ L , , p. .
4 OJ L , , p. .
5 OJ L , , p. .
6 OJ L , , p. .
7 OJ L , , p. .
8 OJ L , , p. .
9 OJ L , , p. .

Article 2

Definitions

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

(1) 'relevant country specific recommendations' mean

(a) Council recommendations adopted in accordance with Article 121(2) and Article 148(4) of the TFEU relating to structural challenges, and,

(b) complementary Commission recommendations issued in accordance with Article 34 of Regulation (EU) 2018/1999[10],

which are appropriate to be addressed through multiannual investments that fall directly within the scope of the Funds as set out in Fund-specific Regulations;

(2) 'applicable law' means Union law and the national law relating to its application;

(3) 'operation' means:

(a) a project, contract, action or group of projects selected under the programmes concerned;

(b) in the context of financial instruments, a programme contribution to a financial instrument and the subsequent financial support provided to final recipients by that financial instrument;

(4) 'operation of strategic importance' means an operation which provides a significant contribution to the achievement of the objectives of a programme and which is subject to particular monitoring and communication measures;

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

(5) 'priority' in the context of the AMIF, the ISF and the BMVI, means a specific objective[11];

(6) *Deleted*

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

(8) 'beneficiary' means:

(a) a public or private body, an entity with or without legal personality or a natural person, responsible for initiating or both initiating and implementing operations; in the context of de minimis aid provided in accordance with Commission Regulations (EU) No 1407/2013 or (EU) No 717/2014, the body granting the aid, where it is responsible for intiating or for initiating and implementing the operation;

(b) in the context of public-private partnerships ('PPP'), the public body initiating a PPP operation or the private partner selected for its implementation;

(c) in the context of State aid schemes, the undertaking which receives the aid, except where State aid per undertaking is less than EUR 200 000, the Member State may decide that the beneficiary for the purposes of this Regulation is the body granting the aid;

(d) in the context of financial instruments, the body that implements the holding fund or, where there is no holding fund structure, the body that implements the specific fund or, where the managing authority manages the financial instrument, the managing authority;

[11] The use of terms "specific objective and "areas of support" is to be aligned throughout the text with the finally agreed nomenclature for EMFF.

(9) 'small project fund' means an operation in an Interreg programme aimed at the selection and implementation of projects of limited financial volume;

(10) 'target' means a pre-agreed value to be achieved at the end of the eligibility period in relation to an indicator included under a specific objective;

(11) 'milestone' means an intermediate value to be achieved at a given point in time during the eligibility period in relation to an output indicator included under a specific objective;

(12) 'output indicator' means an indicator to measure the specific deliverables of the intervention;

(13) 'result indicator' means an indicator to measure the effects of the interventions supported, with particular reference to the direct addressees, population targeted or users of infrastructure;

(14) 'PPP operation' means an operation which is implemented under a partnership between public bodies and the private sector in line with a PPP agreement, and which aims to provide public services through risk sharing by the pooling of either private sector expertise or additional sources of capital or both;

(15) 'financial instrument' means a form of support delivered via a structure through which financial products are provided to final recipients;

(16) 'financial product' means equity or quasi equity investments, loans and guarantees as defined in Article 2 of Regulation (EU, Euratom) [...] ('the Financial Regulation');

(17) 'final recipient' means a legal or natural person receiving support from the Funds through a beneficiary of a small project fund or from a financial instrument;

(18) 'programme contribution' means the support from the Funds and the national public and private, if any, co-financing, to a financial instrument;

(19) 'body implementing a financial instrument' means a body, governed by public or private law, carrying out tasks of a holding fund or of a specific fund;

(20) 'holding fund' means a fund set up under the responsibility of a managing authority under one or more programmes, to implement one or more specific funds;

(21) 'specific fund' means a fund, through which a managing authority or a holding fund provides financial products to final recipients;

(22) 'leverage effect' means the amount of reimbursable financing provided to final recipients divided by the amount of the contribution from the Funds;

(23) 'multiplier ratio' in the context of guarantee instruments, means a ratio established on the basis of a prudent ex ante risk assessment for the respective guarantee product to be offered, between the value of the underlying disbursed new loans, equity or quasi-equity investments, and the amount of the programme contribution set aside for guarantee contracts to cover expected and unexpected losses from those new loans, equity or quasi-equity investments;

(24) 'management costs' means direct or indirect costs reimbursed against evidence of expenditure incurred in the implementation of financial instruments;

(25) 'management fees' means a price for services rendered in the context of the implementation of financial instruments;

(26) 'relocation' means a transfer of the same or similar activity or part thereof within the meaning of Article 2(61a)[12] of Commission Regulation (EU) No 651/2014[13];

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

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

(27) 'public contribution' means any contribution to the financing of operations the source of which is the budget of national, regional or local public authorities or of any European grouping of territorial cooperation (EGTC) established in accordance with Regulation (EC) No 1082/2006 of the European Parliament and of the Council [14], the budget of the Union made available to the Funds, the budget of public law bodies or the budget of associations of public authorities or of public law bodies and, for the purpose of determining the co-financing rate for ESF+ programmes or priorities, may include any financial resources collectively contributed by employers and workers;

(28) 'accounting year' means the period from 1 July to 30 June of the following year, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2022; for the final accounting year, it means the period from [1 July 2029 to 30 June 2030];

(29) 'irregularity' means any breach of applicable law, resulting from an act or omission by a economic operator involved in the implementation of the Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging unjustified expenditure to that budget;

(30) 'serious deficiency' means a deficiency in the effective functioning of the management and control system of a programme for which significant improvements in the management and control systems are required and where any of the key requirements 2, 4, 5, 9, 12, 13 and 15 referred to in Annex X, or two or more of the other key requirements are assessed into categories 3 and 4 of that Annex;

(31) 'total error rate' means the sum of the projected random errors and, if applicable, systemic errors and uncorrected anomalous errors, divided by the audit population;

(32) 'residual error rate' means the sum of the projected random errors and, if applicable, delimited systemic errors and uncorrected anomalous errors identified by the audit authority, less the financial corrections applied by the Member State to reduce the risks identified by the audit authority, divided by the audit population;

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

(33) 'completed operation' means an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the corresponding public contribution has been paid to the beneficiaries;

(34) 'sampling unit' means one of the units, which may be an operation, a project within an operation or a payment claim by a beneficiary, into which an audit population is divided for the purpose of sampling;

(35) 'escrow account' means, in the case of a PPP operation a bank account covered by a written agreement between a public body beneficiary and the private partner approved by the managing authority or an intermediate body used for payments during and/or after the eligibility period;

(36) 'participant' means a natural person benefiting directly from an operation without being responsible for initiating or both initiating and implementing the operation. In the context of the EMFF, a participant shall not receive financial support;

(37) *Deleted*

(38new) 'grants under conditions' means a type of grant subject to conditions linked to the repayment of support;

(39new) 'EIB' means the European Investment Bank, the European Investment Fund or any subsidiary of the European Investment Bank;

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

Article 3

Calculation of time limits for Commission actions

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

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

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

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

TITLE I
OBJECTIVES AND GENERAL RULES ON SUPPORT

CHAPTER II

Policy objectives and principles for the support of the Funds

Article 4

Policy objectives

1. The ERDF, the ESF+, the Cohesion Fund and the EMFF shall support the following policy objectives:

   (a) a smarter Europe by promoting innovative and smart economic transformation;

   (b) a greener, low-carbon and resilient Europe by promoting clean and fair energy transition, green and blue investment, the circular economy, climate adaptation and risk prevention and management;

   (c) a more connected Europe by enhancing mobility and regional ICT connectivity;

   (d) a more social Europe implementing the European Pillar of Social Rights;

   (e) a Europe closer to citizens by fostering the sustainable and integrated development of all types of territories.

2. The ERDF, the ESF+ and the Cohesion Fund shall contribute to the actions of the Union leading to strengthening of its economic, social and territorial cohesion in accordance with Article 174 of the TFEU by pursuing the following goals:

   a) Investment for jobs and growth in Member States and regions, to be supported by the ERDF, the ESF+ and the Cohesion Fund; and

   b) European territorial cooperation (Interreg), to be supported by the ERDF.

3. Member States shall provide information on the support for environment and climate objectives using a methodology based on types of intervention for each of the Funds. That methodology shall consist of assigning a specific weighting to the support provided at a level which reflects the extent to which such support makes a contribution to environmental objectives and to climate objectives. In the case of the ERDF, the ESF+ and the Cohesion Fund weightings shall be attached to dimensions and codes for the types of intervention established in Annex I.

4. Member States and the Commission shall promote the coordination, complementarity and coherence between the Funds and other Union instruments and funds. They shall optimise mechanisms for coordination between those responsible to avoid duplication during planning and implementation. Accordingly, Member States and the Commission shall also take into account the relevant country-specific recommendations in the programming and implementation of the Funds.

Article 5

Shared management

1. The Member States and the Commission shall implement the budget of the Union allocated to the Funds under shared management in accordance with Article [63] of Regulation (EU, Euratom) [number of the new financial regulation] (the 'Financial Regulation').

   Member States shall prepare and implement the support from the Funds at the appropriate territorial level, in accordance with their institutional, legal and financial framework.

2. However, the Commission shall implement the amount of support from the Cohesion Fund transferred to the Connecting Europe Facility ('CEF'), the European Urban Initiative, Interregional Innovative Investments, the amount of support transferred from the ESF+ to transnational cooperation, the amounts contributed to InvestEU[15] and technical assistance at the initiative of the Commission under direct or indirect management in accordance with [points (a) and (c) of Article 62(1)] of the Financial Regulation.

[15] [Regulation (EU) No […] on […] (OJ L […], […], p. […])].

3. In agreement with the Member State concerned, the Commission may implement outermost regions' cooperation under the European territorial cooperation goal (Interreg) under indirect management.

Article 6

Partnership and multi-level governance

1. Each Member State shall organise and implement a partnership with the involvement of relevant partners in accordance with Commission Delegated Regulation (EU) No 240/2014[16], taking into account specificities of the Funds.

2. At least once a year, the Commission shall consult organisations which represent partners at Union level on the implementation of programmes.

[16] Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds (OJ L 74, 14.3.2014, p. 1).

TITLE II

STRATEGIC APPROACH

CHAPTER I
Partnership Agreement

Article 7

Preparation and submission

1. Each Member State shall prepare a Partnership Agreement which sets out the strategic orientation for programming and the arrangements for using the ERDF, the Cohesion Fund, the ESF+, and the EMFF in an effective and efficient way for the period from 1 January 2021 to 31 December 2027.

   The requirement in the first subparagraph shall not apply where:

   a) the amount of resources for a Member State from the ERDF, the Cohesion Fund and the ESF+ is lower than 2.5bn EUR, or
   b) a Member State does not submit more than three programmes under the Investment for jobs and growth goal.

2. The Member State shall submit the Partnership Agreement to the Commission before or at the same time as the submission of the first programme.

3. *deleted*

4. The Member State shall draw up the Partnership Agreement in accordance with the template set out in Annex II.

5. Interreg programmes may be submitted to the Commission before the submission of the Partnership Agreement.

Article 8

Content

1. The Partnership Agreement shall contain the following elements:

(a) the selected policy objectives indicating by which of the funds covered by the Partnership Agreement and programmes they will be pursued and a justification thereto, and where relevant, a justification for using the delivery mode of the InvestEU, taking into account relevant country-specific recommendations, as well as the principles of the European Pillar of Social Rights;

(b) for each of the selected policy objectives referred to in point (a):

(i) a summary of the policy choices and the main results expected for each of the funds covered by the Partnership Agreement, including where relevant, through the use of InvestEU;

(ii) coordination, demarcation and complementarities between the Funds and, where appropriate, coordination between national and regional programmes;

(iii) complementarities between the funds covered by the Partnership Agreement and other Union instruments and funds;

(c) the preliminary financial allocation from each of the funds covered by the Partnership Agreement by policy objective at national level, respecting Fund-specific rules on thematic concentration;

(d) where relevant, the breakdown of financial resources by category of regions drawn up in accordance with Article 102(2) and the amounts of allocations proposed to be transferred between categories of regions pursuant to Article 105;

(d bis) for technical assistance, the choice of the Member State of the form of Union contribution in accordance with Article 30(3) and, where applicable, the preliminary financial allocation from each of the Funds at national level and breakdown of financial resources by programme and category of regions;

(e) the amounts to be contributed to InvestEU by fund and by category of regions, where relevant;

(f) the list of planned programmes under the funds with the respective preliminary financial allocations by fund and the corresponding national contribution by category of regions;

(g) a summary of the actions which the Member State concerned plans to take to reinforce its administrative capacity of the implementation of the funds covered by the Partnership Agreement.

With regard to the European territorial cooperation goal (Interreg), the Partnership Agreement shall only contain the list of planned programmes.

The Partnership Agreement may also contain a summary of the assessment of the fulfilment of relevant enabling conditions referred to in Article 11 and Annexes III and IV.

2. Where a Partnership Agreement is not prepared pursuant to the second subparagraph of paragraph 1 of Article 7, a comprehensive set of information covering points (c) to (f) of paragraph 1 shall be sent to the Commission in the form of Annex IIbis [tables included in sections 3 to 6 of Annex II] before or at the same time as the submission of the first programme.

Article 9

Approval

1. The Commission shall assess the Partnership Agreement and its compliance with this Regulation and with the Fund-specific rules. In its assessment, the Commission shall, in particular, take into account how the Member State intends to address relevant country-specific recommendations.

2. The Commission may make observations within three months of the date of submission by the Member State of the Partnership Agreement.

3. The Member State shall review the Partnership Agreement taking into account the observations made by the Commission.

4. The Commission shall adopt a decision by means of an implementing act approving the Partnership Agreement no later than four months after the date of submission of that Partnership Agreement by the Member State concerned.

Article 10

Use of the ERDF, the ESF+, the Cohesion Fund and the EMFF delivered through InvestEU

1. Member States may allocate:

   – in the Partnership Agreement or in the comprehensive set of information referred to in Article 8(2); or

   – in the request for an amendment of a programme,

   the amount of ERDF, the ESF+, the Cohesion Fund and the EMFF to be contributed to InvestEU and delivered through budgetary guarantees. The amount to be contributed to InvestEU shall not exceed [5 %] of the total allocation of each Fund, except in duly justified cases. Such contributions shall not constitute transfers of resources under Article 21.

2. For the Partnership Agreement or in the comprehensive set of information referred to in Article 8(2), resources of the current and future calendar years may be allocated. For the request for an amendment of a programme, only resources of future calendar years may be allocated.

3. The amount referred to in paragraph 1 shall be used for the provisioning of the part of the EU guarantee under the Member State compartment.

4. Where a contribution agreement, as set out in Article [9] of the [InvestEU Regulation], has not been concluded by 31 December 2021 for an amount referred to in paragraph 1 allocated in the Partnership Agreement or in the comprehensive set of information referred to in Article 8(2), the Member State shall submit a request for amendment of a programme or programmes to use the corresponding amount.

   The contribution agreement for an amount referred to in paragraph 1 allocated in the request of the amendment of a programme shall be concluded simultaneously with the adoption of the decision amending the programme.

5. Where a guarantee agreement, as set out in Article [9] of the [InvestEU Regulation], has not been concluded within nine months from the approval of the contribution agreement, the respective amounts paid into the common provisioning fund as a provisioning shall be transferred back to a programme or programmes and the Member State shall submit a corresponding request for a programme amendment.

6. Where a guarantee agreement, as set out in Article [9] of the [InvestEU Regulation], has not been fully implemented within four years from the signature of the guarantee agreement, the Member State may request that amounts committed in the guarantee agreement but not covering underlying loans or other risk bearing instruments shall be treated in accordance with paragraph 5.

7. Resources generated by or attributable to the amounts contributed to InvestEU and delivered through budgetary guarantees shall be made available to the Member State and shall be used for support under the same objective or objectives in the form of financial instruments.

8. The Commission shall re-budget contributed amounts which have not been used for InvestEU for the year in which the corresponding programme amendment is approved. Such re-budgetisation may not go beyond the year 2027.

The decommitment time limit for the re-budgeted amount in accordance with Article 99 shall start from the year in which the contribution has been re-budgeted.

Title II

Strategic Approach

CHAPTER II

Enabling conditions and performance framework

Article 11

Enabling conditions

1. For the specific objectives, prerequisite conditions for their effective and efficient implementation ('enabling conditions') are laid down in this Regulation.

   Annex III lays down horizontal enabling conditions applicable to all specific objectives and the criteria necessary for the assessment of their fulfilment.

   Annex IV lays down thematic enabling conditions for the ERDF, the Cohesion Fund and the ESF+ and the criteria necessary for the assessment of their fulfilment.

   The enabling condition regarding the tools and capacity for effective application of State aid rules is not applicable to programmes supported by the AMIF, the BMVI and the ISF.

2. When preparing a programme or introducing a new specific objective as part of a programme amendment, the Member State shall assess whether the applicable enabling conditions linked to the selected specific objective are fulfilled, taking into account the principle of proportionality. An enabling condition is fulfilled where all the related criteria are met. The Member State shall identify in each programme or in the programme amendment the fulfilled and non-fulfilled enabling conditions and where it considers that an enabling condition is fulfilled, it shall provide justification.

3. Where an enabling condition is not fulfilled at the time of approval of the programme or the programme amendment, the Member State shall report to the Commission as soon as it considers the enabling condition fulfilled with justification.

4. The Commission shall, within three months of receipt of the information referred to in paragraph 3, perform an assessment and inform the Member State where it agrees with the fulfilment.

Where the Commission disagrees with the assessment of the Member State, it shall inform the Member State setting out its assessment accordingly. The Member State shall react in accordance with the procedure set out in paragraph 3.

5. Without prejudice to Article 99, expenditure related to operations linked to the specific objective shall not be reimbursed by the Commission to the Member State until the Commission has informed the Member State of the fulfilment of the enabling condition pursuant to the first sub-paragraph of paragraph 4.

The first sub-paragraph shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.

6. The Member State shall ensure that enabling conditions remain fulfilled throughout the programming period. It shall inform the Commission of any modification impacting the fulfilment of enabling conditions.

Where the Commission considers that an enabling condition is no longer fulfilled, it shall inform the Member State setting out its assessment and give it the opportunity to present its observations within one month. Where the Commission concludes that the non-fulfilment of the enabling condition persists, and without prejudice to Article 99, expenditure related to the specific objective concerned shall not be reimbursed by the Commission to the Member State as from the date the Commission informs the Member State accordingly.

Article 12

Performance

1. For each programme, the Member State shall establish a performance framework which shall allow monitoring, reporting on and evaluating programme performance during its implementation, and contribute to measuring the overall performance of the Funds.

   The performance framework shall consist of:

   (a) output and result indicators linked to specific objectives set in the Fund-specific Regulations identified for the programme;

   (b) milestones to be achieved by the end of the year 2024 for output; and

   (c) targets to be achieved by the end of the year 2029 for output and result indicators.

2. Milestones and targets shall be established in relation to each specific objective within a programme, with the exception of technical assistance implemented pursuant to Article 30(5) and to Article 32 and of the specific objective addressing material deprivation set out in Article [4(1)(xi)] of the ESF+ Regulation.

3. Milestones and targets shall allow the Commission and the Member State to measure progress towards the achievement of the specific objectives. They shall meet the requirements set out in Article [33(3)] of the Financial Regulation.

Article 13

Methodologies for the establishment of the performance framework

1. For each programme, the methodologies to establish the performance framework shall include:

   (a) the criteria applied by the Member State to identify indicators;

   (b) data or evidence used, data quality assurance and the calculation method;

   (c) factors that may influence the achievement of the milestones and targets and how they were taken into account.

2. The Member State shall make those methodologies available upon request by the Commission.

Article 14

Mid-term review and flexibility amount

1. For programmes supported by the ERDF, the ESF+ and the Cohesion Fund, the Member State shall review each programme, taking into account the following elements:

   (a) the new challenges identified in relevant country-specific recommendations adopted in 2024

   (a) bis the progress in implementing the principles of the European Pillar of Social Rights;

   (b) the socio-economic situation of the Member State or region concerned;

   (b) bis the results from relevant evaluations;

   (c) the progress in achieving the milestones, taking into account any difficulties encountered in the implementation of the programme;

   (d) the outcome of the technical adjustment as set out in Article 104(2), where applicable.

1a. The Member State shall submit an assessment for each programme on the outcome of the mid-term review, including a proposal for the definitive allocation of the flexibility amount referred to in the second subparagraph of Article 80(1), to the Commission by 31 March 2025.

2. If deemed necessary following the mid-term review of the programme or, in case new challenges were identified pursuant to point (a) of paragraph 1, the Member State shall submit to the Commission the assessment referred to in paragraph 1a together with the amended programme.

The revised programme shall include:

(a) the allocations of the financial resources by priority;

(b) revised or new targets;

(c) the revised allocations of the financial resources resulting from the technical adjustment set out in Article 104(2) including the amounts for the years 2025, 2026 and 2027, where applicable.

The Commission shall approve the amendment of the programme in accordance with Article 19, including a definitive allocation of the flexibility amount.

3. Where, as a result of the mid-term review, the Member State considers that the programme does not need to be amended, the Commission shall:

(a) either adopt a decision within three months of the submission of this assessment confirming the definitive allocation of the flexibility amount referred to in the second subparagraph of Article 80(1) or;

(b) request the Member State within two months of the submission of this assessment to submit an amended programme in accordance with Article 19;

3a. Until the adoption of the Commission decision confirming the definitive allocation of the flexibility amount as referred to in paragraph 1a, this amount shall not be available for selection of operations.

4. In 2026, the Commission shall prepare a report about the outcome of the mid-term review and submit it to the European Parliament and to the Council.

[CHAPTER III

MEASURES LINKED TO SOUND ECONOMIC GOVERNANCE]

[Article 15

Measures linking effectiveness of Funds to sound economic governance[17]

1. The Commission may request a Member State to review and propose amendments to relevant programmes, where this is necessary to support the implementation of relevant Council Recommendations.

   Such a request may be made for the following purposes:

   (a) to support the implementation of a relevant country-specific recommendation adopted in accordance with Article 121(2) TFEU and of a relevant Council recommendation adopted in accordance with Article 148(4) TFEU, addressed to the Member State concerned;

   (b) to support the implementation of relevant Council Recommendations addressed to the Member State concerned and adopted in accordance with Articles 7(2) or 8(2) of Regulation (EU) No 1176/2011[18] of the European Parliament and of the Council provided that these amendments are deemed necessary to help correct the macro-economic imbalances.

2. A request by the Commission to a Member State in accordance with paragraph 1 shall be justified, with reference to the need to support the implementation of the relevant recommendations and shall indicate the programmes or priorities which it considers are concerned and the nature of the amendments expected.

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17 The Council does not have yet a mandate on Article 15 of the Common Provisions Regulation, pending an agreement on the MFF.

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

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

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

5. Where the Commission has not submitted observations or where it is satisfied that any observations submitted have been duly taken into account, it shall adopt a decision approving the amendments to the relevant programmes in accordance with the time limit set out in Article [19(4)].

6. Where the Member State fails to take effective action in response to a request made in accordance with paragraph 1, within the deadlines set out in paragraphs 3 and 4, the Commission may suspend all or part of the payments for the programmes or priorities concerned in accordance with Article 91.

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

   (a) where the Council decides in accordance with Article 126(8) or Article 126(11) TFEU that a Member State has not taken effective action to correct its excessive deficit;

   (b) where the Council adopts two successive recommendations in the same imbalance procedure, in accordance with Article 8(3) of Regulation (EU) No 1176/2011 of the European Parliament and of the Council [19] on the grounds that a Member State has submitted an insufficient corrective action plan;

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

(c) where the Council adopts two successive decisions in the same imbalance procedure in accordance with Article 10(4) of Regulation (EU) No 1176/2011 establishing non-compliance by a Member State on the grounds that it has not taken the recommended corrective action;

(d) where the Commission concludes that a Member State has not taken measures as referred to in Council Regulation (EC) No 332/2002[20] and as a consequence decides not to authorise the disbursement of the financial assistance granted to that Member State;

(e) where the Council decides that a Member State does not comply with the macro-economic adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013 of the European Parliament and of the Council[21], or with the measures requested by a Council decision adopted in accordance with Article 136(1) TFEU.

Priority shall be given to the suspension of commitments; payments shall be suspended only when immediate action is sought and in the case of significant non-compliance. The suspension of payments shall apply to payment applications submitted for the programmes concerned after the date of the decision to suspend.

The Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned addressed to the Commission within 10 days of adoption of the decision or recommendation referred to in the previous sub-paragraph, recommend that the Council cancel the suspension referred to in the same sub-paragraph.

8. A proposal by the Commission for the suspension of commitments shall be deemed adopted by the Council unless the Council decides, by means of an implementing act, to reject such a proposal by qualified majority within one month of the submission of the Commission proposal.

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

21 Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p. 1).

The suspension of commitments shall apply to the commitments from the Funds for the Member State concerned from 1 January of the year following the decision to suspend.

The Council shall adopt a decision, by means of an implementing act, on a proposal by the Commission referred to in paragraph 7 in relation to the suspension of payments.

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

10. The suspension of commitments shall be subject to a maximum of 25 % of the commitments relating to the next calendar year for the Funds or 0,25 % of nominal GDP whichever is lower, in any of the following cases:

(a) in the first case of non-compliance with an excessive deficit procedure as referred to under point (a) of paragraph 7;;

(b) in the first case of non- compliance relating to a corrective action plan under an excessive imbalance procedure as referred to under point b of paragraph 7;

(c) in case of non-compliance with the recommended corrective action pursuant to an excessive imbalance procedure as referred to under point (c) of paragraph 7;

(d) in the first case of non-compliance as referred to under points (d) and (e) of paragraph 7.

In case of persistent non-compliance, the suspension of commitments may exceed the maximum percentages set out in the first sub-paragraph.

11. The Council shall lift the suspension of commitments on a proposal from the Commission, in accordance with the procedure set out in paragraph 8, in the following cases:

(a) where the excessive deficit procedure is held in abeyance in accordance with Article 9 of Council Regulation (EC) No 1467/97[22] or the Council has decided in accordance with Article 126(12) TFEU to abrogate the decision on the existence of an excessive deficit;

(b) where the Council has endorsed the corrective action plan submitted by the Member State concerned in accordance with Article 8(2) of Regulation (EU) No 1176/2011 or the excessive imbalance procedure is placed in a position of abeyance in accordance with Article 10(5) of that Regulation or the Council has closed the excessive imbalance procedure in accordance with Article 11 of that Regulation;

(c) where the Commission has concluded that a Member State has taken appropriate measures as referred to in Regulation (EC) No 332/2002;

(d) where the Commission has concluded that the Member State concerned has taken appropriate measures to implement the adjustment programme referred to in Article 7 of Regulation (EU) No 472/2013 or the measures requested by a decision of the Council in accordance with Article 136(1) TFEU.

After the Council has lifted the suspension of commitments, the Commission shall re-budget the suspended commitments in accordance with Article [8] of Council Regulation (EU, Euratom) [*[...] (MFF regulation)*].

Suspended commitments may not be re-budgeted beyond the year 2027.

The decommitment time limit for the re-budgeted amount in accordance with Article 99 shall start from the year in which the suspended commitment has been re-budgeted.

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22 Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

A decision concerning the lifting of the suspension of payments shall be taken by the Council on a proposal by the Commission where the applicable conditions set out in in the first sub-paragraph are fulfilled.

12. The Commission shall keep the European Parliament informed of the implementation of this Article. In particular, the Commission shall, when one of the conditions set out in paragraph 7 is fulfilled for a Member State, immediately inform the European Parliament and provide details of the Funds and programmes which could be subject to a suspension of commitments.

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

The Commission shall transmit the proposal for suspension of commitments or the proposal to lift such a suspension, to the European Parliament and to the Council.

13. Paragraphs 1 to 12 shall not apply to priorities or programmes under Article [4(c)(v)(ii)] of ESF+ Regulation.]

TITLE III

PROGRAMMING

CHAPTER I

General provisions on the Funds

Article 16

Preparation and submission of programmes

1. Member States shall prepare programmes to implement the Funds for the period from 1 January 2021 to 31 December 2027.

2. Member States shall submit programmes to the Commission no later than 3 months after the submission of the Partnership Agreement or of the comprehensive set of information referred to in Article 8(2). For the AMIF, the ISF and the BMVI, Member States shall submit programmes to the Commission no later than 3 months after the entry into force of [this Regulation] and [the relevant fund-specific Regulation], whichever is later.

3. Member States shall prepare programmes in accordance with the programme template set out in Annex V.

   For the AMIF, the ISF and the BMVI, Member States shall prepare programmes in accordance with the programme template set out in Annex VI.

Article 17

Content of programmes

1. Each programme shall set out a strategy for the programme's contribution to the policy objectives and the communication of its results.

2. A programme shall consist of one or more priorities. Each priority shall correspond to a single policy objective or to technical assistance if it is implemented pursuant to Article 30(4) or Article 32 and may use support from one or more Funds. A priority corresponding to a policy objective shall consist of one or more specific objectives. More than one priority may correspond to the same policy objective.

   For programmes supported by the EMFF, each priority may correspond to one or more policy objectives.

   For programmes supported by the AMIF, the ISF and the BMVI, a programme shall use support from one fund and consist of specific objectives and of technical assistance specific objective**s**.

3. Each programme shall set out:

   (a) a summary of the main challenges, taking into account:

      (i) economic, social and territorial disparities, except for programmes supported by the EMFF;

      (ii) market failures;

      (ii bis) investment needs and complementarity with other forms of support;

      (iii) challenges identified in relevant country-specific recommendations, in relevant national or regional strategies of that Member State, and, for the AMIF, ISF and BMVI, other relevant Union recommendations addressed to the Member State;

      (iv) challenges in administrative capacity and governance;

(v) lessons learnt from past experience;

(vi) macro-regional strategies and sea-basin strategies where Member States and regions participate in such strategies;

(vii) for programmes supported by the AMIF, the ISF and the BMVI, progress in implementing the relevant Union *acquis* and action plans and a justification for the choice of specific objectives;

Points (i), (ii) and (vi) of paragraph 3(a) shall not apply to programmes supported by the AMIF, the ISF and the BMVI.

(b) a justification for the selected policy objectives, corresponding priorities, specific objectives and the forms of support;

(c) for each priority, except for technical assistance, specific objectives, the types of intervention and an indicative breakdown of the programmed resources by type of intervention or area of support[23];

(d) for each specific objective:

(i) the related types of actions and their expected contribution to those specific objectives and to macro-regional strategies and sea-basin strategies, where appropriate;

(ii) output indicators and result indicators with the corresponding milestones and targets;

(iii) the main target groups;

(iv) indication of the specific territories targeted, including the planned use of integrated territorial investment, community-led local development or other territorial tools;

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[23] N.B. The use of terms "specific objective and "areas of support" is to be aligned throughout the text with the finally agreed nomenclature for EMFF.

(v) the interregional and transnational actions with beneficiaries located in at least one other Member State or outside the Union, where relevant;

(vi) the planned use of financial instruments;

(e) the planned use of technical assistance in pursuant to Article 32 if applicable, and relevant types of intervention;

(e bis) for each priority on technical assistance implemented pursuant to Article 30(4):

(i) the related types of actions;

(ii) output indicators with the corresponding milestones and targets;

(iii) the main target groups;

(vii) the types of intervention and an indicative breakdown of the programmed resources by type of intervention or area of support;

(f) a financing plan containing:

(i) a table specifying the total financial allocations for each of the Funds and for each category of region, where applicable, for the whole programming period and by year, including any amounts transferred pursuant to Article 21;

(ii) for programmes supported by ERDF, ESF+ and the Cohesion Fund, a table specifying the total financial allocations for each priority by Fund and by category of region and the national contribution and whether it is made up of public and private contribution;

(iii) for programmes supported by the EMFF, a table specifying for each type of area of support, the amount of the total financial allocations of the support from the Fund and the national contribution;

(iv) for programmes supported by the AMIF, the ISF and the BMVI, a table specifying, by specific objective, the total financial allocations by type of action, the national contribution and whether it is made up of public and private contribution;

(g) the actions taken to involve the relevant partners referred to in Article 6 in the preparation of the programme, and the role of those partners in the implementation, monitoring and evaluation of the programme;

(h) for each enabling condition linked to the selected specific objective, established in accordance with Article 11, Annex III and Annex IV, an assessment of whether the enabling condition is fulfilled at the date of submission of the programme;

(i) the envisaged approach to communication and visibility for the programme through defining its objectives, target audiences, communication channels, planned budget and relevant indicators for monitoring and evaluation;

(j) the programme authorities and the body or in case of technical assistance pursuant to Article 30(5), where applicable bodies which receive payments from the Commission.

Point (d) of this paragraph shall not apply to the specific objective set out in Article [4(1)(xi)] of the ESF+Regulation.

When submitting the programme for the ERDF, the Cohesion Fund, the ESF+ and the EMFF, this shall be accompanied by a list of planned operations of strategic importance, for information purposes.

If, in accordance with point (j), more than one body is identified, the Member State shall set out the share of the reimbursed amounts between those bodies.

Where a Partnership Agreement is not prepared, the programme shall also include the information set out in points (ii) and (iii) of Article 8(1)(b).

4. By way of derogation from point (b) to (d) of paragraph 3, for each specific objective of programmes supported by the AMIF, the ISF and the BMVI the following shall be provided:

(a) a description of the initial situation, challenges and responses supported by the Fund;

(b) indication of the implementation measures;

(c) an indicative list of actions and their expected contribution to the specific objectives;

(d) where applicable, a justification for the operating support, specific actions, emergency assistance, and actions as referred to in Articles [16 and 17] of the AMIF regulation;

(e) output and result indicators with the corresponding milestones and targets;

(f) an indicative breakdown of the programmed resources by type of intervention.

5. Types of intervention shall be based on a nomenclature set out in Annex I. For programmes supported by the EMFF, AMIF, the ISF and the BMVI, types of intervention shall be based on a nomenclature set out in the Fund-specific Regulations.

6. *deleted*

7. The Member State shall communicate to the Commission any changes in the information referred to in paragraph (3)(j) without requiring a programme amendment.

Article 18

Approval of programmes

1. The Commission shall assess the programme and its compliance with this Regulation and with the Fund-specific Regulations, as well as its consistency with the relevant Partnership Agreement or with the relevant comprehensive set of information referred to in Article 8(2). In its assessment, the Commission shall, in particular, take into account how relevant country-specific recommendations have been addressed.

2. The Commission may make observations within three months of the date of submission of the programme by the Member State.

3. The Member State shall review the programme taking into account the observations made by the Commission.

4. The Commission shall adopt a decision by means of an implementing act approving the programme no later than six months after the date of submission of the programme by the Member State.

Article 19

Amendment of programmes

1. The Member State may submit a motivated request for an amendment of a programme together with the amended programme setting out the expected impact of that amendment on the achievement of the objectives.

2. The Commission shall assess the amendment and its compliance with this Regulation and with the Fund-specific Regulations, including requirements at national level, and may make observations within two month of the submission of the amended programme.

3. The Member State shall review the amended programme and take into account the observations made by the Commission.

4. The Commission shall approve the amendment of a programme no later than four months after its submission by the Member State.

5. For the programmes supported by the ERDF, Cohesion Fund and ESF+, the Member State may transfer during the programming period an amount of up to 8%, of the initial allocation of a priority and no more than 4% of the programme budget to another priority of the same Fund of the same programme. For the programmes supported by the ERDF and ESF+, the transfer shall only concern allocations for the same category of region.

For the programmes supported by the EMFF, the Member State may transfer during the programming period an amount of up to 10% of the initial allocation of a Union priority to another Union priority;

For the programmes supported by the AMIF, the ISF and the BMVI, the Member State may transfer during the programming period allocations between types of actions within the same specific objective and, in addition, an amount of up to 15% of the initial allocation of a priority to another priority of the same Fund.

Such transfers shall not affect previous years. They shall be considered to be not substantial and shall not require a decision of the Commission amending the programme. They shall however, comply with all regulatory requirements. The Member State shall submit to the Commission the revised table referred to under points (f)(ii), (f)(iii) or (f)(iv) of Article 17(3) as applicable[24].

6. The approval of the Commission shall not be required for corrections of a purely clerical or editorial nature that do not affect the implementation of the programme. Member States shall inform the Commission of such corrections.

7. For programmes supported by the EMFF, amendments to the programmes relating to the introduction of indicators shall not require the approval of the Commission.

[24] This paragraph may have to be aligned with the final wording of Article 19(5) of the Council mandate on the Interreg regulation.

Article 20

Joint support from the ERDF, the ESF+ and the Cohesion Fund

1. The ERDF, the ESF+ and the Cohesion Fund may jointly provide support for programmes under the Investment for jobs and growth goal.

2. The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of 10 % of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation.

Article 21

Transfer of resources

1. Member States may request the transfer of up to [5 %] of programme financial allocations from any of the Funds to any other Fund under shared management or to any instrument under direct or indirect management.

2. Transferred resources shall be implemented in accordance with the rules of the Fund or the instrument to which the resources are transferred and, in the case of transfers to instruments under direct or indirect management, for the benefit of the Member State concerned.

3. Requests under paragraph 1 shall set out the total amount transferred for each year by Fund and by category of region, where relevant, shall be duly justified and shall be accompanied by the revised programme or programmes, from which the resources are to be transferred in accordance with Article 19 indicating to which other Fund or instrument the amounts are transferred.

4. After consultation with the Member State concerned, the Commission may object to a request for transfer in the related programme amendment where this would undermine the achievement of the objectives of the programme from which the resources are to be transferred.

5. Only resources of future calendar years may be transferred.

CHAPTER II

Territorial development

Article 22

Integrated territorial development

Where a Member State supports integrated territorial development, it shall do so through territorial or local development strategies in any of the following forms:

(a) integrated territorial investments;

(b) community-led local development;

(c) another territorial tool supporting initiatives designed by the Member State.

Article 23

Territorial strategies

1. Territorial strategies implemented pursuant to points (a) or (c) of Article 22 shall contain the following elements:

   (a) the geographical area covered by the strategy;

   (b) an analysis of the development needs and the potential of the area;

   (c) a description of an integrated approach to address the identified development needs and the potential of the area;

   (d) a description of the involvement of partners in the preparation and in the implementation of the strategy.

   They may also contain a list of operations to be supported.

2. Territorial strategies shall be under the responsibility of the relevant urban, local or other territorial authorities or bodies.

3. Where the list of operations to be supported has not been included in the territorial strategy, the relevant urban, local or other territorial authorities or bodies shall select or shall be involved in the selection of operations.

Selected operations shall comply with the territorial strategy.

4. Where an urban, local or other territorial authority or body carries out tasks falling under the responsibility of the managing authority other than the selection of operations, the authority shall be identified by the managing authority as an intermediate body.

5. Support may be provided for the preparation and design of territorial strategies.

Article 24

Integrated territorial investment

1. Where a strategy implemented in accordance with Article 23 involves investments that receive support from one or more Funds, from more than one programme or from more than one priority of the same programme, actions may be carried out as an integrated territorial investment ('ITI').

Article 25

Community-led local development

1. The ERDF, the ESF+ [, the EAFRD as referred to in Regulation XX/XXXX] and the EMFF may support community-led local development.

2. The Member State shall ensure that community-led local development is:

   (a) focused on subregional areas;

   (b) led by local action groups composed of representatives of public and private local socio-economic interests, in which no single interest group control the decision-making;

   (c) carried out through integrated strategies in accordance with Article 26;

   (d) supportive of networking, innovative features in the local context and, where appropriate, cooperation with other territorial actors.

3. Where support to strategies referred to in paragraph 2(c) is available from more than one Fund, the relevant managing authorities shall organise a joint call for selection of those strategies and establish a joint committee for all the Funds concerned to monitor the implementation of those strategies. The relevant managing authorities may choose one of the Funds concerned to support all preparatory, management and animation costs referred to in points (a) and (c) of Article 28(1) related to those strategies.

4. Where the implementation of such a strategy involves support from more than one Fund, the relevant managing authorities may choose one of the Funds concerned as the Lead Fund.

5. The rules of the Lead Fund shall apply to that strategy. The authorities of other funds shall rely on decisions and management verifications made by the competent Lead Fund authority.

6. The authorities of the Lead Fund shall provide the authorities of other Funds with information necessary to monitor and make payments in accordance with the rules set out in the Fund-specific Regulation.

7. Where the European Agricultural Fund for Rural Development (EAFRD) supports strategies referred to in paragraph 2(c) via LEADER, in accordance with Article [71] of Regulation [CAP Plan], paragraphs 3 to 6 shall also apply to the EAFRD and to the respective programme authorities.

Article 26

Community-led local development strategies

1. The relevant managing authorities shall ensure that each strategy referred to in Article 25(2)(c) sets out the following elements:

   (a) the geographical area and population covered by that strategy;

   (b) the community involvement process in the development of that strategy;

   (c) an analysis of the development needs and potential of the area;

   (d) the objectives of that strategy, including measurable targets for results, and related planned actions;

   (e) the management, monitoring and evaluation arrangements, demonstrating the capacity of the local action group to implement that strategy;

   (f) a financial plan, including the planned allocation from each Fund and programme concerned.

2. The relevant managing authorities shall define criteria for the selection of those strategies, set up a committee to carry out this selection and approve the strategies selected by that committee.

3. The relevant managing authorities shall complete the first round of selection of strategies and ensure the local action groups selected can fulfil their tasks set out in Article 27(3) within 12 months of the date of the approval of the relevant programme or, in the case of strategies supported by more than one Fund, within 18 months of the date of the approval of the last programme concerned.

4. The decision approving a strategy shall set out the allocation of each Fund and programme concerned and set out the responsibilities for the management and control tasks under the programme or programmes.

Article 27

Local action groups

1. Local action groups shall design and implement the strategies referred to in Article 25(2)(c).

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

3. The local action groups, exclusively, shall carry out all of the following tasks:

   (a) building the capacity of local actors to develop and implement operations;

   (b) drawing up a non-discriminatory and transparent selection procedure and criteria, which avoids conflicts of interest and ensures that no single interest group controls selection decisions;

   (c) preparing and publishing calls for proposals;

   (d) selecting operations and fixing the amount of support and presenting the proposals to the body responsible for final verification of eligibility before approval;

   (e) monitoring progress towards the achievement of objectives of the strategy;

   (f) evaluating the implementation of the strategy.

4. Where local action groups carry out tasks not covered by paragraph 3 that fall under the responsibility of the managing authority those local action groups shall be identified by the managing authority as intermediate bodies in accordance with the Fund-specific rules.

5. The local action group may be a beneficiary and may implement operations in accordance with the strategy.

Article 28

Support from Funds for community-led local development

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

   (a) capacity building and preparatory actions supporting the design and future implementation of the strategies;

   (b) the implementation of operations, including cooperation activities and their preparation, selected under the local development strategy;

   (c) the management, monitoring and evaluation of the strategy and its animation.

2. The support referred to under point (a) of paragraph 1 shall be eligible regardless of whether the strategy is subsequently selected for funding.

   The support referred to under point (c) of paragraph 1 shall not exceed 25 % of the total public contribution to the strategy.

CHAPTER III

Technical assistance

Article 29

Technical assistance at the initiative of the Commission

1. At the initiative of the Commission, the Funds may support preparatory, monitoring, control, audit, evaluation, communication including corporate communication on the political priorities of the Union, visibility and all administrative and technical assistance actions necessary for the implementation of this Regulation and, where appropriate with third countries.

2. Such actions may cover future and previous programming periods.

3. The Commission shall set out its plans when a contribution from the Funds is envisaged in accordance with Article [110] of the Financial Regulation.

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

Article 30

Technical assistance of Member States[25]

1. At the initiative of a Member State, the Funds may support actions, which may concern previous and subsequent programming periods, necessary for the effective administration and use of those Funds.

   The amounts for technical assistance shall not be taken into account for the purposes of thematic concentration in accordance with the fund-specific rules.

2. Each Fund may support technical assistance actions eligible under any of the other Funds.

3. The Union contribution for technical assistance in a Member State shall be made either pursuant to point (b) of Article 46 or pursuant to point (e) of that Article.

   The Member State shall indicate its choice of the form of Union contribution for technical assistance in the Partnership Agreement in accordance with Annex II, or as part of the comprehensive set of information in accordance with Annex IIbis. This choice shall apply to all programmes in the Member State concerned for the entire programming period and cannot be modified subsequently.

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[25] *Recital (25) will be amended as follows:*

(25) In order to reduce the administrative burden, it should be possible to implement technical assistance linked to programme implementation at the initiative of the Member State through a flat rate based on progress in programme implementation and to cover also horizontal tasks. In order to facilitate financial management, Member States should have the possibility to indicate one or more bodies to which related payments by the Commission should be made. Since these payments are based on the application of a flat-rate, there should be no controls of underlying expenditure.

Nevertheless, where continuity with the 2014-2020 period is preferred, the Member State should also be provided with the possibility to continue to implement technical assistance through a separate programme or priorities within a programme and to receive reimbursement of eligible costs actually incurred by the beneficiary and paid in implementing operations. The Member State should indicate its choice of the form of Union contribution for technical assistance for the entire programming period. However, in order to simplify the implementation for the AMIF, the ISF and the BMVI and for Interreg programmes, only the flat-rate approach should be used. Regardless of the option chosen, technical assistance may be complemented with targeted administrative capacity building measures using reimbursement methods that are not linked to costs. Actions and deliverables as well as corresponding Union payments can be agreed in a roadmap and can lead to payments for results on the ground.

For programmes supported by the AMIF, the ISF and the BMVI and for Interreg programmes the Union contribution for technical assistance shall be made only pursuant to point (e) of Article 46.

4. Where the Union contribution for technical assistance in a Member State is reimbursed pursuant to point (b) of Article 46, the following elements shall apply:

(a) technical assistance shall take the form of a priority relating to one single Fund in one or more programmes, or of a specific programme, or a combination thereof;

(b) the amount of the Funds allocated to technical assistance is limited to the following:

(i) for the ERDF support under the Investment for jobs and growth goal: 3,5%

(ii) for the Cohesion Fund support: 2,5 %;

(iii) for the ESF+ support: 4% and for programmes under Article 4(1)(xi) of the ESF+ Regulation: 5 %;

(iv) for the ERDF, ESF+ and Cohesion Fund, where the total amount allocated to a Member State under the Investment for jobs and growth goal does not exceed EUR 1 billion: 6%.

(v) for the EMFF support: 6 %.

5. Where the Union contribution for technical assistance is reimbursed pursuant to point (e) of Article 46, the following elements shall apply:

(a) the amount of the Funds allocated to technical assistance shall be identified as part of the financial allocations of each priority of the programme in accordance with point (ii) of Article 17(3)(f) and shall not take the form of a separate priority or a specific programme[26] except for programmes supported by the AMIF, the ISF and the BMVI for which it shall take the form of a specific objective;

[26] N.B. The use of terms "specific objective and "areas of support" is to be aligned throughout the text with the finally agreed nomenclature for EMFF.

(b) the reimbursement is made, by applying the percentages set out in points (i) to (v) to the eligible expenditure included in each payment application pursuant to Article 85(3)(a) or (c) as appropriate and from the same fund to which the eligible expenditure is reimbursed, to one or more bodies which receive payments from the Commission in accordance with Article 17(3)(j);

(i) for the ERDF support under the Investment for jobs and growth goal: 3,5%

(ii) for the Cohesion Fund support: 2,5 %;

(iii) for the ESF+ support: 4% and for programmes under Article 4(1)(xi) of the ESF+ Regulation: 5 %;

(iv) for the ERDF, ESF+ and Cohesion Fund, where the total amount allocated to a Member State under the Investment for jobs and growth goal does not exceed EUR 1 billion, the percentage reimbursed for technical assistance: 6%.

(v) for the EMFF, the AMIF, the ISF and the BMVI support: 6 %.

(c) the amounts allocated to technical assistance identified in the programme shall correspond to the percentages set out in points (i)-(v) of point (b) for each priority and fund.

6. Specific rules for technical assistance for Interreg programmes shall be set out in the ETC Regulation.

Article 32

Financing not linked to costs for technical assistance of Member States

In addition to Article 30, the Member State may propose to undertake additional technical assistance actions to reinforce the capacity of Member State authorities, beneficiaries and relevant partners necessary for the effective administration and use of the Funds.

Support for such actions shall be implemented by financing not linked to costs in accordance with Article 89. Such support may also take the form of a specific programme containing the elements set out in Article 89(1).

TITLE IV
MONITORING, EVALUATION, COMMUNICATION AND VISIBILITY

CHAPTER I
Monitoring

Article 33

Monitoring committee

1. The Member State shall set up a committee to monitor the implementation of the programme ('monitoring committee') within three months of the date of notification to the Member State concerned of the decision approving the programme.

   The Member State may set up a single monitoring committee to cover more than one programme.

2. Each monitoring committee shall adopt its rules of procedure. The rules of procedure of the monitoring committee shall include provisions regarding the prevention of any situation of conflict of interest.

3. The monitoring committee shall meet at least once a year and shall review all issues that affect the programme's progress towards achieving its objectives.

4. The rules of procedures of the monitoring committee and information shared with the monitoring committee shall be published on the website referred to in Article 44(1).

5. Paragraphs 1 to 4 shall not apply to programmes limited to the specific objective set out in Article 4(1)(xi) of the ESF+ Regulation and related technical assistance.

Article 34

Composition of the monitoring committee

1. The Member State shall determine the composition of the monitoring committee and shall ensure a balanced representation of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 6.

   Each member of the monitoring committee may have a vote. Other participants may attend the meeting in accordance with the rules of procedure.

   The monitoring committee shall be chaired by a representative of the Member State or of the managing authority.

   The list of the members of the monitoring committee shall be published on the website referred to in Article 44(1).

2. Representatives of the Commission shall participate in the work of the monitoring committee in an advisory capacity.

Article 35

Functions of the monitoring committee

1. The monitoring committee shall examine:

   (a) the progress in programme implementation and in achieving the milestones and targets;

   (b) any issues that affect the performance of the programme and the measures taken to address those issues;

   (c) the contribution of the programme to tackling the challenges identified in the relevant country-specific recommendations, where applicable;

   (d) the elements of the ex ante assessment listed in Article 52(3) and the strategy document referred to in Article 53(1);

(e) the progress made in carrying out evaluations, syntheses of evaluations and any follow-up given to findings;

(f) the implementation of communication and visibility actions;

(g) the progress in implementing operations of strategic importance, where relevant;

(h) the fulfilment of enabling conditions and their application throughout the programming period;

(i) the progress in administrative capacity building for public institutions and beneficiaries, where relevant;

(j) information regarding the implementation of the programme's contribution to [Invest EU] in accordance with Article 10 or of the resources transferred in accordance with Article 21, where applicable.

As regards the programmes supported by the EMFF, the monitoring committee shall be consulted and shall, if it considers it appropriate, give an opinion on any amendment of the programme proposed by the managing authority.

2. The monitoring committee shall approve:

(a) the methodology and criteria used for the selection of operations, including any changes thereto, without prejudice to points (b), (c) and (d) of Article 27(3);

(b) the final performance report for programmes supported by the Funds;

(c) the evaluation plan and any amendment thereto;

(d) any proposal by the managing authority for the amendment of a programme including for transfers in accordance with Article 19(5) and Article 21, with the exception of programmes supported by the EMFF.

Article 36

Annual performance review

1. Review meetings shall be organised between the Commission and each Member State to examine the performance of each programme.

   The review meeting may cover more than one programme.

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

2. For programmes supported by the Funds, the review meeting shall be organised annually. The Member State and the Commission may agree not to organise an annual review meeting. In this case, the review may be carried out in writing.

3. For programmes supported by the Funds, the Member State shall no later than one month before the review meeting provide the Commission with concise and updated information related to the progress in programme implementation.

4. The outcome of the annual review meeting shall be recorded in agreed minutes.

5. The Member State shall follow up issues raised during the meeting, which significantly affect the implementation of the programme and inform the Commission within three months of the measures taken.

6. *deleted*

Article 37

Transmission of data

1. The Member State or the managing authority shall electronically transmit to the Commission cumulative data for each programme by 31 January, 30 April, 31 July, and 31 October of each year in accordance with the template set out in Annex VII, with the exception of the information required in point (b) of paragraph 2 and in paragraph 3 that should be reported by 31 January and 31 July of each year.

   The first transmission shall be due by 31 January 2022 and the last one by 31 January [2030].

   For priorities supporting the specific objective set out in Article 4(1)(xi) of the ESF+ Regulation, data shall be transmitted annually by 30 November.

   The ESF+ Regulation may determine specific rules for the frequency of collecting and transmitting long-term result indicators.

2. The data shall be broken down for each priority by specific objective and, where relevant, by category of regions and shall refer to:

   (a) the number of selected operations, their total eligible cost, the contribution from the Funds and the total eligible expenditure declared by the beneficiaries to the managing authority, all broken down by types of intervention;

   (b) the values of output and result indicators for selected operations and values achieved by operations.

   This paragraph shall not comprise data for technical assistance implemented pursuant to Article 30(5) and point (b) shall not apply to technical assistance implemented pursuant to Article 32.

3. For financial instruments data shall also be provided on the following:

(a) eligible expenditure by type of financial product;

(b) amount of management costs and fees declared as eligible expenditure;

(c) the amount, by type of financial product, of private and public resources mobilised in addition to the Funds;

(d) interest and other gains generated by support from the Funds to financial instruments referred to in Article 54 and resources returned attributable to support from the Funds as referred to in Article 56.

(e) total value of loans, equity or quasi-equity investments in final recipients which were guaranteed with programme resources and which were actually disbursed to final recipients.

4. The data submitted in accordance with this Article shall be reliable and reflect the data available in the electronic system referred to in Article 66 (1)(e) as of the end of the month preceding the month of submission.

5. The Member State or the managing authority shall publish or provide a link to all the data transmitted to the Commission on the website referred to in point (b) of Article 41 or on the website referred to in Article 44(1).

6. *deleted*

Article 38

Final performance report

1. For programmes supported by the Funds, each managing authority shall submit to the Commission a final performance report of the programme by 15 February [2031].

2. The final performance report shall assess the achievement of programme objectives based on the elements listed in Article 35(1) with the exception of the information provided under Article 35(1)(d).

3. The Commission shall examine the final performance report and inform the managing authority of any observations within five months of the date of receipt of the final performance report. Where such observations are made, the managing authority shall provide all necessary information with regard to those observations and, where appropriate, inform the Commission, within three months, of measures taken. The Commission shall inform the managing authority and the Member State of the acceptance of the report, within two months after receiving all necessary information from the managing authority. Where the Commission does not inform the managing authority within those deadlines, the report shall be deemed to be accepted.

4. The managing authority shall publish final performance reports on the website referred to in Article 44(1).

5. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt an implementing act establishing the template for the final performance report. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 108.

CHAPTER II
Evaluation

Article 39

Evaluations by the Member State

1. The managing authority or the Member State shall carry out evaluations of the programmes related to one or more of the following criteria: effectiveness, efficiency, relevance, coherence and EU added value with the aim to improve the quality of the design and implementation of programmes. Evaluations may also cover other relevant criteria and may cover more than one programme.

2. In addition, an evaluation for each programme to assess its impact shall be carried out by 30 June 2029.

3. Evaluations shall be entrusted to internal or external experts functionally independent.

4. The managing authority or the Member State shall ensure the necessary procedures to produce and collect the data necessary for evaluations.

5. The managing authority or the Member State shall draw up an evaluation plan which may cover more than one programme. For the AMIF, the ISF and the BMVI, that plan shall include a mid-term evaluation to be completed by 31 March 2024.

6. The managing authority or the Member State shall submit the evaluation plan to the monitoring committee no later than one year after the approval of the programme.

7. All evaluations shall be published on the website referred to in Article 44(1).

Article 40

Evaluation by the Commission

1. The Commission shall carry out a mid-term evaluation to examine the effectiveness, efficiency, relevance, coherence and EU added value of each Fund by the end of 2024. The Commission may make use of all relevant information already available in accordance with Article [128] of the Financial Regulation.

2. The Commission shall carry out a retrospective evaluation to examine the effectiveness, efficiency, relevance, coherence and EU added value of each Fund by 31 December 2031.

CHAPTER III
Visibility, transparency and communication

SECTION I
VISIBILITY OF SUPPORT FROM THE FUNDS

Article 41

Visibility

Each Member State shall ensure:

(a) the visibility of support relating to operations supported by the Funds with particular attention to operations of strategic importance;

(b) communication to Union citizens of the role and achievements of the Funds through a single website portal providing access to all programmes involving that Member State.

Article 42

Emblem of the Union

Member States, managing authorities and beneficiaries shall use the emblem of the European Union in accordance with Annex VIII when carrying out visibility, transparency and communication activities.

Article 43

Communication officers and networks

1. Each Member State shall identify a communication coordinator for visibility, transparency and communication activities in relation to the support from the Funds, including programmes under the European territorial cooperation goal (Interreg) where that Member State hosts the managing authority. The communication coordinator may be appointed at the level of the body defined under Article 65(6) and shall coordinate communication and visibility measures across programmes. This coordination may be done through a communication strategy covering some or all programmes.

   The communication coordinator shall involve in the visibility, transparency and communication activities the following bodies, where appropriate:

   (a) European Commission Representations and European Parliament Liaison Offices in the Member States; as well as Europe Direct Information Centres and other networks; educational and research institutions;

   (b) other relevant partners and bodies.

2. Each managing authority shall identify a communication officer for each programme ('programme communication officer'), which may be responsible for more than one programme.

3. The Commission shall maintain the network comprising communication coordinators, programme communication officers and Commission representatives to exchange information on visibility, transparency and communication activities.

SECTION II
TRANSPARENCY OF IMPLEMENTATION OF THE FUNDS AND COMMUNICATION ON PROGRAMMES

Article 44

Responsibilities of the managing authority

1. The managing authority shall ensure that, within six months of the programme's approval, there is a website where information on programmes under its responsibility is available, covering the programme's objectives, activities, available funding opportunities and achievements.

2. The managing authority shall ensure the publishing on the website referred to in paragraph 1, or on the single website portal referred to in point (b) of Article 41, a timetable of the planned calls for proposals that should be updated at least twice a year with the following indicative data:

   (a) geographical area covered by the call for proposal;

   (b) policy objective or specific objective concerned;

   (c) type of eligible applicants;

   (d) total amount of support for the call;

   (e) start and end date of the call.

3. The managing authority shall make the list of operations selected for support by the Funds publicly available on the website in at least one of the official languages of the Union and shall update that list at least every six months. Each operation shall have a unique code. The list shall contain the following data:

   (a) in the case of legal entities, the beneficiary's name;

   (b) where the beneficiary is a natural person the first name and the surname;

(c) for EMFF operations linked to a fishing vessel, the Union fishing fleet register identification number as referred to in Commission Implementing Regulation (EU) 2017/21827;

(d) name of the operation;

(e) the purpose of the operation and its expected achievements;

(f) start date of the operation;

(g) expected or actual date of completion of the operation;

(h) total cost of the operation;

(i) Fund concerned;

(j) specific objective concerned;

(k) Union co-financing rate;

(l) location indicator or geolocation for the operation and country concerned;

(m) for mobile operations or operations covering several locations the location of the beneficiary where the beneficiary is a legal entity; or the region on NUTS 2 level where the beneficiary is a natural person;

(n) type of intervention for the operation in accordance with Article 67(3)(g);

For data referred to in points (b) and (c) of the first sub-paragraph, the data shall be removed after two years from the date of the initial publication on the website.

The data referred to in points (b) and (c) of the first sub-paragraph shall only be published if such publication is in line with national law on the protection of personal data.

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[27] Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (OJ L 34, 9.2.2017, p. 9).

4. The data referred to in paragraphs 2 and 3 shall be published on the website in open, machine-readable formats, as set out in Article 5(1) of the Directive 2003/98/EC[28] of the European Parliament and of the Council, which allows data to be sorted, searched, extracted, compared and reused..

5. The managing authority shall inform the beneficiaries that the data will be made public before the publication takes place in accordance with this Article.

6. The managing authority shall ensure that communication and visibility material is made available upon request to Union Institutions, bodies or agencies and that a royalty-free, non-exclusive and irrevocable licence to use such material and any pre-existing rights attached to it is granted to the Union in accordance with Annex VIII. This shall not require significant additional costs for neither the beneficiaries nor the managing authority.

Article 45

Responsibilities of beneficiaries

1. Beneficiaries and bodies implementing financial instruments shall acknowledge support from the Funds, including resources reused in accordance with Article 56, to the operation, by:

   (a) providing on the beneficiary's official website or social media sites, where such sites exist, a short description of the operation, proportionate to the level of support, including its aims and results, and highlighting the financial support from the Funds;

   (b) providing a statement highlighting the support from the Funds in a visible manner on documents and communication material relating to the implementation of the operation, intended for the general public or for participants;

   (c) publicly displaying plaques or billboards as soon as the physical implementation of operations involving physical investment or the purchase of equipment starts, with regard to the following:

[28] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

(i) operations supported by the ERDF and the Cohesion Fund the total cost of which exceeds EUR 500 000;

(ii) operations supported by the ESF+, the EMFF, the ISF, the AMIF and the BMVI the total cost of which exceeds EUR 100 000.

(d) for operations not falling under point (c), publicly displaying at least one poster of a minimum size A3 or equivalent electronic display with information about the operation highlighting the support from the Funds, except when the beneficiary is a natural person;

(e) for operations of strategic importance and operations whose total cost exceed EUR 10 000 000 organising a communication activity and involving the Commission and the responsible managing authority in a timely manner.

For operations supported under the specific objective set out in Article 4(1))(xi) of the ESF+ Regulation, the requirement set out in point (d) shall not apply.

2. For small project funds, the beneficiary shall ensure that final recipients comply with the requirements set out in paragraph 1, except for projects where the total cost is under EUR 10.000.

For financial instruments, the beneficiary shall acknowledge the origin and ensure the visibility of the Union funding (in particular when promoting the actions and their results), by providing coherent, effective and targeted information to multiple audiences, including the media and the public.

3. Where the beneficiary does not comply with its obligations under Article 42 or paragraphs 1 and 2 of this Article, and where remedial actions have not been put into place, the managing authority shall apply measures, taking into account the principle of proportionality, by cancelling up to 2% of the support from the Funds to the operation concerned.

TITLE V

FINANCIAL SUPPORT FROM THE FUNDS

CHAPTER I

Forms of Union contribution

Article 46

Forms of Union contribution to programmes

The Union contribution may take any of the following forms:

(a) financing not linked to costs of the relevant operations in accordance with Article 89 and based on either of the following:

(i) the fulfilment of conditions;

(ii) the achievement of results;

(b) reimbursement of support provided to beneficiaries in accordance with Chapter II and III of this Title;

(c) unit costs in accordance with Article 88, which cover all or certain specific categories of eligible costs, clearly identified in advance by reference to an amount per unit;

(d) lump sums in accordance with Article 88, which cover in global terms all or certain specific categories of eligible costs, clearly identified in advance;

(e) flat-rate financing in accordance with Article 88, which covers specific categories of eligible costs, clearly identified in advance, by applying a percentage;

(f) a combination of the forms referred to in points (a) to (e).

CHAPTER II
FORMS OF SUPPORT BY MEMBER STATES

Article 47

Forms of support

Member States shall use the contribution from the Funds to provide support to beneficiaries in the form of grants, financial instruments or prizes or a combination thereof.

SECTION I
FORMS OF GRANTS

Article 48

Forms of grants

1. Grants provided by Member States to beneficiaries may take any of the following forms:

   (a) reimbursement of eligible costs actually incurred by a beneficiary or the private partner of PPP operations[29] and paid in implementing operations, contributions in kind and depreciation;

   (b) unit costs;

   (c) lump sums;

   (d) flat-rate financing;

   (e) a combination of the forms referred to in points (a) to (d), provided that each form covers different categories of costs or where they are used for different projects forming a part of an operation or for successive phases of an operation.

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[29] *A new recital (37a) is included:* (37a) In order to provide the necessary flexibility for implementation of PPPs, the PPP agreement should specify when expenditure is considered eligible, in particular under which conditions it is incurred by the beneficiary or by the private partner of the PPP, irrespective of who is carrying out the payments in implementing the PPP operation.

(f) financing not linked to costs, provided such grants are covered by a reimbursement of the Union contribution pursuant to Articles 88 or 89.

Where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid or for which the calculation of simplified cost options by the Managing Authority cannot be performed in any of the ways listed in paragraph 2. Where flat-rate financing is used, only the categories of costs to which the flat-rate applies may be reimbursed in accordance with point (a) of the first sub-paragraph.

In addition, allowances and salaries paid to participants may be reimbursed in accordance with point (a) of the first sub-paragraph.

2. The amounts for the forms of grants referred to under point (b), (c) and (d) of paragraph 1, shall be established in one of the following ways:

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

(i) statistical data, other objective information or an expert judgement;

(ii) the verified historical data of individual beneficiaries;

(iii) the application of the usual cost accounting practices of individual beneficiaries;

(b) draft budget established on a case-by-case basis and agreed *ex ante* by the body selecting the operation, where the total cost of the operation does not exceed EUR 200 000;

(c) in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation;

(d) in accordance with the rules for application of corresponding unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation;

(e) flat rates and specific methods established by or on the basis of this Regulation or the Fund-specific Regulations.

Article 49

Flat-rate financing for indirect costs concerning grants

Where a flat rate is used to cover indirect costs of an operation, it may be based on one of the following:

(a) a flat rate of up to 7 % of eligible direct costs, in which case the Member State shall not be required to perform a calculation to determine the applicable rate;

(b) a flat rate of up to 15 % of eligible direct staff costs in which case the Member State shall not be required to perform a calculation to determine the applicable rate;

(c) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated in accordance with Article 48(2)(a).

In addition, where a Member State has calculated a flat rate in accordance with Article 67(5)(a) of Regulation (EU) No 1303/2013, that flat rate may be used for a similar operation for the purposes of point (c).

Article 50

Direct staff costs concerning grants

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 direct 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 or supply or service contracts which exceed in value the thresholds set out in Article 4 of Directive 2014/24/EU of the European Parliament and of the Council [30] or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council [31].

2. For the purposes of determining direct staff costs, an hourly rate may be calculated in one of the following ways:

   (a) 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;

   (b) by dividing the latest documented monthly gross employment costs by the average monthly working time of the person concerned in accordance with applicable national rules referred to in the employment or work contract or an appointment decision (both referred to as employment document).

3. When applying the hourly rate calculated in accordance with paragraph 2, the total number of hours declared per person for a given year or month shall not exceed the number of hours used for the calculation of that hourly rate.

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30 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

31 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

4. 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.

5. Staff costs related to individuals who work on part-time assignment on the operation 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 employees setting out that fixed percentage.

Article 51

Flat rate financing for eligible costs other than direct staff costs concerning grants

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. The Member State shall not be required to perform a calculation to determine the applicable rate.

2. For operations supported by the AMIF, the ISF, the BMVI, the ESF+ and the ERDF, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate.

3. The flat rate referred to in paragraph 1 of this Article shall not be applied to staff costs calculated on the basis of a flat rate as referred to in Article 50(1).

Article 51a

Grants under conditions

1. Member States may provide grants under conditions to beneficiaries which are fully or partially repayable as specified in the document setting out the conditions for support.

2. Repayments by the beneficiary shall be made under the conditions agreed by the managing authority and the beneficiary.

3. Member States shall reuse resources paid back by the beneficiary for the same purpose or in accordance with the objectives of the respective programme before 31 December 2030 either in the form of grants under conditions, in the form of a financial instrument or in another form of support. The amounts paid back and information about their reuse shall be included in the final performance report.

4. Member States shall adopt the necessary measures to ensure that the resources shall be kept in separate accounts or under appropriate accounting codes.

5. Union resources paid back by beneficiaries at any time, but not reused by the end of the period indicated in paragraph 3, shall be repaid to the budget of the Union in accordance with Article 82.

SECTION II
FINANCIAL INSTRUMENTS

Article 52

Financial instruments

1. Managing authorities may provide a programme contribution, from one or more programmes to existing or newly created financial instruments set up at national, regional, transnational or cross border level and implemented directly by, or under the responsibility of, the managing authority which contribute to achieving specific objectives.

2. Financial instruments shall provide support to final recipients only for investments, including working capital, expected to be financially viable and which do not find sufficient funding from market sources.

   This support shall be provided only for the elements of the investments which are not physically completed or fully implemented at the date of the investment decision.

3. Support from the Funds through financial instruments shall be based on an *ex ante* assessment[32] drawn up under the responsibility of the managing authority. The *ex ante* assessment shall be completed before managing authorities make programme contributions to financial instruments.

[32] *Recital (42) is to be amended as follows:* (42) The decision by the managing authorities to finance support measures through financial instruments should be determined on the basis of an ex ante assessment. This Regulation should lay down the minimum mandatory elements of ex ante assessments, for which indicative information available at the date of their completion should be provided, and should allow Member States to make use of the *ex ante* assessments carried out for the 2014-2020 period, updated where necessary, in order to avoid administrative burden and delays in setting up financial instruments.

The *ex ante* assessment shall include at least the following elements:

(a) the proposed amount of programme contribution to a financial instrument and the estimated leverage effect;

(b) the proposed financial products to be offered, including the possible need for differentiated treatment of investors;

(c) the proposed target group of final recipients;

(d) the expected contribution of the financial instrument to the achievement of specific objectives.

The *ex ante* assessment may be reviewed or updated and may cover part or the entire territory of the Member State and may be based on existing or updated *ex ante* assessments.

4. Support to final recipients may be combined with any form of Union contribution, including from the same Fund and may cover the same expenditure item. In that case, the Funds' financial instrument support, which is part of a financial instrument operation, shall not be declared to the Commission for support under another form, another Fund or another Union instrument.

5. Financial instruments may be combined with programme support in the form of grants in a single financial instrument operation, within a single funding agreement, where both distinct forms of support shall be provided by the body implementing the financial instrument. In such case the rules applicable to financial instruments shall apply to that single financial instrument operation. The programme support in the form of grants shall be directly linked and necessary for the financial instrument operation and shall not exceed the value of the investment supported by the financial product.

6. In the case of combined support under paragraphs 4 and 5, separate records shall be kept for each source of support.

7. The sum of all forms of combined support shall not exceed the total amount of the expenditure item concerned. Grants shall not be used to reimburse support received from financial instruments. Financial instruments shall not be used to pre-finance grants.

Article 53

Implementation of financial instruments

1. Financial instruments implemented directly by the managing authority may only provide loans or guarantees. The managing authority shall set out the terms and conditions of the programme contribution to the financial instrument in a strategy document including all the elements set outin Annex IX.

2. Financial instruments implemented under the responsibility of the managing authority may be either of the following:

   (a) an investment of programme resources into the capital of a legal entity;

   (b) separate blocks of finance or fiduciary accounts.

   The managing authority shall select, on the basis of applicable law, the body implementing a financial instrument.

2a. The managing authority may directly award a contract for the implementation of a financial instrument to:

   (i) the EIB;

   (ii) international financial institutions in which a Member State is a shareholder;

   (iii) a publicly-owned bank or institution, established as a legal entity carrying out financial activities on a professional basis, which fulfils all of 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 Funds;

— operates under a public policy mandate given by the relevant authority of a Member State at national or regional level, which includes carrying out, as all or part of its activities, economic development activities contributing to the objectives of the Funds;

— carries out, as all or part of its activities, economic development activities contributing to the objectives of the Funds in regions, policy areas or sectors for which access to funding from market sources is not generally available or sufficient;

— operates without primarily focussing on maximising profits, but ensures a long-term financial sustainability for its activities;

— ensures that the direct award of a contract referred to in point (b) does not provide any direct or indirect benefit for commercial activities by way of appropriate measures in accordance with applicable law;

— is subject to the supervision of an independent authority in accordance with applicable law.

(iv) other bodies, also entering under the scope of Article 12 of the Public Procurement Directive 2014/24/EU.

2b. When the body selected by the managing authority implements a holding fund, that body may further select other bodies to implement specific funds.

3. The terms and conditions of programme contributions to financial instruments implemented in accordance with paragraph 2, shall be set out in funding agreements between:

(a) the duly mandated representatives of the managing authority and the body implementing a holding fund, where applicable;

(b) the duly mandated representatives of the managing authority, or, where applicable, the body implementing a holding fund and the body implementing a specific fund.

Those funding agreements shall include all the elements set out in Annex IX.

4. The financial liability of the managing authority shall not exceed the amount committed by the managing authority to the financial instrument under the relevant funding agreements.

5. The bodies implementing the financial instruments concerned, or in the context of guarantees, the body providing the underlying loans, shall support final recipients, taking due account of the programme objectives and the potential for the financial viability of the investment as justified in the business plan or an equivalent document. The selection of final recipients shall be transparent and shall not give rise to a conflict of interest.

6. National co-financing of a programme may be provided either by the managing authority or at the level of holding funds, or at the level of specific funds, or at the level of investments in final recipients, in accordance with the Fund-specific rules. When the national co-financing is provided at the level of investments in final recipients, the body implementing financial instruments shall keep documentary evidence demonstrating the eligibility of the underlying expenditure.

7. The managing authority, in managing the financial instrument pursuant to paragraph 1, or the body implementing the financial instrument, in managing the financial instrument pursuant to paragraph 2, shall keep separate accounts or maintain an accounting code per priority and, where applicable, per each category of region for each programme contribution and separately for resources referred to in Articles 54 and 56 respectively.

Article 54

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

1. Support from the Funds paid to financial instruments shall be placed in accounts in financial institutions domiciled within Member States and shall be managed in line with sound financial management.

2. Interest and other gains attributable to support from the Funds paid to financial instruments shall be used under the same objective or objectives, as the initial support from the Funds, including the payments of management fees and reimbursement of management costs incurred by the bodies implementing the financial instrument in accordance with point (d) of Article 62(1), either within the same financial instrument; or, following the winding up of the financial instrument, in other financial instruments or other forms of support, until the end of the eligibility period.

3. Interest and other gains referred to in paragraph 2 not used in accordance with that provision shall be deducted from the accounts submitted for the final accounting year.

Article 55

Differentiated treatment of investors

1. Support from the Funds to financial instruments invested in final recipients, resources paid back as well as any type of income generated by those investments, which are attributable to the support from the Funds, may be used for differentiated treatment of investors operating under the market economy principle through an appropriate sharing of risks and profits.

2. The level of such differentiated treatment shall not exceed what is necessary to create incentives for attracting private resources, established by either a competitive process or an independent assessment.

Article 56

Re-use of resources attributable to the support from the Funds

1. Resources paid back, before the end of the eligibility period, to financial instruments from investments in final recipients or from the release of resources set aside for guarantee contracts, including capital repayments and any type of generated income that is attributable to the support from the Funds, shall be re-used in the same or other financial instruments for further investments in final recipients, or to cover the losses in the nominal amount of the Funds contribution to the financial instrument resulting from negative interest and/or for any management costs and fees associated to such further investments.

2. Member States shall adopt the necessary measures to ensure that the resources referred to in paragraph 1 and paid back to financial instruments during a period of at least eight years after the end of the eligibility period, are re-used in accordance with the policy objectives of the programme or programmes under which they were set up, either within the same financial instrument or, following the exit of those resources from the financial instrument, in other financial instruments or in other forms of support.

CHAPTER III
Eligibility rules

Article 57

Eligibility

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

2. Expenditure shall be eligible for a contribution from the Funds if it has been incurred by a beneficiary or the private partner of a PPP operation and paid in implementing operations, between the date of submission of the programme to the Commission or from 1 January 2021, whichever date is earlier, and 31 December [2029].

   For costs reimbursed pursuant to points (b), (c) and (f) of Article 48(1), the actions constituting the basis for reimbursement shall be carried out between the date of submission of the programme to the Commission or from 1 January 2021, whichever is earlier, and 31 December [2029].

3. For the ERDF, expenditure related to operations covering more than one category of region as set out in Article 102(2) within a Member State shall be allocated to the categories of regions concerned on a *pro rata* basis, based on objective criteria.

   For the ESF+, expenditure related to operations can be allocated to any of the categories of regions of the programme under the condition that the operation contributes to the achievement of the specific objectives of the programme.

4. All or part of an operation may be implemented outside of a Member State, including outside the Union, provided that the operation contributes to the objectives of the programme[33].

5. For grants taking the forms of points (b), (c), and (d) of Article 48(1), the expenditure which shall be eligible for a contribution from the Funds shall equal the amounts calculated in accordance with Article 48(2).

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

   This provision shall not apply to the compensation measures supported by EMFF, the compensation for additional costs in the outermost regions for fisheries and aquaculture products, as well as to the operations under Article 11 of ERDF Regulation, regarding to the specific additional allocation for the outermost regions.

7. Expenditure which becomes eligible as a result of a programme amendment shall be eligible from the date of the submission of the corresponding request to the Commission.

   For the ERDF, the Cohesion Fund, that shall be the case where a new type of intervention referred to in Table 1 of Annex I or, for the AMIF, the ISF and the BMVI, in the Fund-specific Regulations is added in the programme.

   Where a programme is amended in order to provide a response to natural disasters, the programme may provide that the eligibility of expenditure relating to such amendment starts from the date when the natural disaster occurred.

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[33] *Recital (37) is amended as follows:* (37) In order to provide legal clarity, it is appropriate to specify the eligibility period for expenditure or costs linked to operations supported by the Funds under this Regulation and to restrict support for completed operations. The date from which expenditure becomes eligible for support from the Funds in case of adoption of new programmes or of changes in the programmes should also be clarified, including the exceptional possibility to extend the eligibility period to the start of a natural disaster in case there is urgent need to mobilise resources to respond to such disaster. At the same time, flexibility in programme implementation should be provided for as regards the eligibility of expenditure for operations which contribute to the objectives of the programme, regardless if they are implemented outside of a Member State or the Union or in the same category of region within a Member State.

8. Where a new programme is approved, expenditure shall be eligible from the date of submission of the corresponding request to the Commission.

9. An operation may receive support from one or more Funds or from one or more programmes and from other Union instruments. In such cases expenditure declared in a payment application for one of the Funds shall not be declared for either of the following:

(a) support from another Fund or Union instrument;

(b) support from the same Fund under another programme.

The amount of expenditure to be entered into a payment application of a Fund may be calculated for each Fund and for the programme or programmes concerned on a *pro rata* basis, in accordance with the document setting out the conditions for support.

Article 58

Non eligible costs

1. The following costs shall not be eligible for a contribution from the Funds:

(a) interest on debt, except in relation to grants given in the form of an interest rate subsidy or guarantee fee subsidy;

(b) the purchase of land for an amount exceeding 10 % of the total eligible expenditure for the operation concerned; for derelict sites and for those formerly in industrial use which comprise buildings, that limit shall be increased to 15 %; those percentages shall apply to the programme contribution paid to the final recipient or, in case of guarantees, to the amount of the underlying loan;

(c) value added tax ('VAT'), except where it is non-recoverable under national VAT legislation.

The treatment of VAT at the level of investments made by final recipients shall not be taken into account for the purposes of determining the eligibility of expenditure under the financial instrument. However, where financial instruments are combined with grants under Article 52(5), the provisions of first subparagraph shall apply to the grant.

Point (b) shall not apply to operations concerning environmental conservation.

2. The Fund-specific Regulations may identify additional costs that are not eligible for a contribution from each Fund.

Article 59

Durability of operations

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

   (a) a cessation or transfer of a productive activity outside the geographical area covered by the programme;

   (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;

   (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

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

   Repayment by the Member State due to non-compliance with this Article shall be made in proportion to the period of non-compliance.

2. Operations supported by the ESF+ shall repay the support from the ESF+ only when they are subject to an obligation for maintenance of investment under State aid rules.

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

Article 60

Relocation

1. Expenditure supporting relocation as defined in Article 2(26) shall not be eligible for a contribution from the Funds.

2. Where a contribution from the Funds constitutes State aid, the managing authority shall satisfy itself that the contribution does not support relocation in accordance with Article 14(16) of Commission Regulation (EU) No 651/2014.

Article 61

Specific eligibility rules for grants

1. Contributions in kind in the form of provision of works, goods, services, land and real estate for which no payment supported by invoices, or documents of equivalent probative value, has been made, may be eligible where the following conditions are fulfilled:

   (a) the public support paid to the operation which includes contributions in kind does not exceed the total eligible expenditure, excluding contributions in kind, at the end of the operation;

   (b) the value attributed to contributions in kind does not exceed the costs generally accepted on the market in question;

   (c) the value and the delivery of the contribution in kind can be independently assessed and verified;

   (d) in the case of provision of land or real estate, a payment, for the purposes of a lease agreement of a nominal amount per annum not exceeding a single unit of the currency of the Member State, may be made;

   (e) in the case of contributions in kind in the form of unpaid work, the value of that work is determined by taking into account the verified time spent and the rate of remuneration for equivalent work.

The value of the land or real estate referred to in point (d) of the first subparagraph of this Article shall be certified by an independent qualified expert or duly authorised official body and shall not exceed the limit laid down in Article 58(1)(b).

2. Depreciation costs for which no payment supported by invoices has been made, may be considered as eligible where the following conditions are fulfilled:

(a) the eligibility rules of the programme allow for it;

(b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices for eligible costs where those costs were reimbursed in the form referred to in Article 48(1)(a);

(c) the costs relate exclusively to the period of support for the operation;

(d) public grants have not contributed towards the acquisition of the depreciated assets.

Article 62

Specific eligibility rules for financial instruments

1. Eligible expenditure of a financial instrument shall be the total amount of programme contribution paid to, or, in the case of guarantees, set aside for guarantee contracts, by, the financial instrument within the eligibility period, where that amount corresponds to:

(a) payments to final recipients, in the case of loans, equity and quasi-equity investments;

(b) resources set aside for guarantee contracts, whether outstanding or having already come to maturity, in order to honour possible guarantee calls for losses, calculated based on a prudent ex ante risk assessment and in accordance with the multiplier ratio established for the respective underlying disbursed new loans, equity or quasi-equity investments in final recipients;

(c) payments to, or for the benefit of, final recipients where financial instruments are combined with other Union contribution in a single financial instrument operation in accordance with Article 52(5);

(d) payments of management fees and reimbursements of management costs incurred by the bodies implementing the financial instrument.

1a. Where a financial instrument is implemented across consecutive programming periods, support may be provided to, or for the benefit of, final recipients, including management costs and fees, based on legal commitments made under the previous programming period, provided that such support complies with the eligibility rules of the subsequent programming period. In such cases, the eligibility of expenditure submitted in payment applications shall be determined in accordance with the rules of the respective programming period.

2. For point (b) of paragraph 1, if the entity benefiting from the guarantees has not disbursed the planned amount of new loans, equity or quasi-equity investments to final recipients in accordance with the multiplier ratio, the eligible expenditure shall be reduced proportionally. The multiplier ratio may be reviewed, where justified by subsequent changes in market conditions. Such a review shall not have retroactive effect on the eligible expenditure corresponding to the amount of the underlying support which has been paid back.

3. For point (d) of paragraph 1, where bodies implementing a holding fund and/or specific funds, are selected through a direct award of contract pursuant to Article 53(2a), the amount of management cost and fees shall be a flat rate of up to 10% of the total amount included in each payment application pursuant to Article 86(2)(a) and (b). The flat rate shall be up to 20% of the total amount related to equity or quasi-equity investments included in each payment application pursuant to Article 86(2)(b).

For point (d) of paragraph 1, bodies implementing a holding fund and/or specific funds are selected through a competitive tender in accordance with the applicable law, the amount of management costs and fees shall be established in the funding agreement reflecting the result of the competitive tender. Such management costs and fees shall consist of both a base and a performance-based remuneration.

4. Where arrangement fees, or any part thereof, are charged to final recipients, they shall not be declared as eligible expenditure.

5. The eligible expenditure declared in accordance with paragraph 1 shall not exceed the sum of the total amount of support from the Funds paid for the purposes of that paragraph and the corresponding national co-financing.

TITLE VI
MANAGEMENT AND CONTROL

CHAPTER I
General rules on management and control

Article 63

Responsibilities of Member States

1. Member States shall have management and control systems for their programmes in accordance with this Title and ensure their functioning in accordance with sound financial management and the key requirements listed in Annex X.

2. Member States shall ensure the legality and regularity of expenditure included in the accounts submitted to the Commission and shall take all required actions to prevent, detect and correct and report on irregularities including fraud.

3. Member States shall, upon request of the Commission, take the actions necessary to ensure the effective functioning of their management and control systems and the legality and regularity of expenditure submitted to the Commission. Where that action is an audit, the Commission officials or their authorised representatives may take part.

4. Member States shall ensure the quality and reliability of the monitoring system and of data on indicators.

4a. Member States shall ensure publication of information in accordance with the requirements established in this Regulation and in the Fund-specific Regulations, except where Union law or national law excludes such publication for reasons of security, public order, criminal investigations or protection of personal data in accordance with Regulation (EU) 2016/679[1] of the European Parliament and of the Council.

5. Member States shall have systems and procedures to ensure that all documents required for the audit trail as set out in Annex XI are kept in accordance with the requirements set out in Article 76.

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

7. Member States shall ensure that all exchanges of information between beneficiaries and the programme authorities can be carried out by means of electronic data exchange systems in accordance with Annex XII.

For programmes supported by the EMFF, the AMIF, the ISF and the BMVI, the first sub-paragraph shall apply as from 1 January 2023.

The first sub-paragraph shall not apply to programmes or priorities under Article [4(1)(xi)] of the ESF+ Regulation.

8. Member States shall ensure that all official exchanges of information with the Commission are carried out by means of an electronic data exchange system in accordance with Annex XIII.

8a. The Member State shall provide, or shall ensure that the managing authorities provide, forecasts of the amount for payment applications to be submitted for the current and subsequent calendar year by 31 January and 31 July, in accordance with Annex VII bis.

9. Each Member State shall have in place, at the latest by the time of submission of the final payment application for the first accounting year and no later than 30 June 2023, a description of the management and control system in accordance with the template set out in Annex XIV. It shall keep that description updated to reflect any subsequent modifications.

10. Annex YZ is setting out the criteria for determining the cases of irregularity to be reported and the data to be provided as well as the format to be used for reporting of irregularities.

Article 64

Commission powers and responsibilities

1. The Commission shall satisfy itself that Member States have management and control systems that comply with this Regulation and that those systems function effectively during the implementation of the programmes. The Commission shall draw up an audit strategy and an audit plan which shall be based on a risk-assessment.

   The Commission and the audit authorities shall coordinate their audit plans.

2. Commission audits shall be carried out up to three calendar years following the acceptance of the accounts in which the expenditure concerned was included. This period shall not apply to operations where there is a suspicion of fraud.

3. For the purpose of their audits, Commission officials or their authorised representatives shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the Funds or to management and control systems and shall receive copies in the specific format requested.

4. For on-the-spot audits, the following shall also apply:

   (a) the Commission shall give at least 12 working days' notice for the audit to the competent programme authority, except in urgent cases. Officials or authorised representatives of the Member State may take part in such audits.

   (b) where the application of national provisions reserves certain acts for agents specifically designated by national legislation, Commission officials and authorised representatives shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect of the fundamental rights of the legal subjects concerned.

   (c) the Commission shall transmit the preliminary audit findings no later than 3 months after the last day of the audit, to the competent Member State authority.

   (d) the Commission shall transmit the audit report no later than 3 months from the date of receiving a complete reply from the competent Member State authority to the preliminary audit findings.

For the purpose of complying with the time limits set out in points (c) and (d) above, the Commission shall make available the preliminary audit findings and the audit report in at least one of the official languages of the institutions of the Union.

The time limits referred to in points (c) and (d) may be extended upon agreement between the Commission and the competent Member State authority.

Where a time limit is set for a reply by the Member State to the preliminary audit findings or the audit report referred to in points (c) and (d), that time limit shall start upon their receipt by the competent Member State authority in at least one of the official languages of the concerned Member State.

Article 65

Programme authorities

1. For the purposes of Article [63(3)] of the Financial Regulation, the Member State shall identify for each programme a managing authority and an audit authority. Where a Member State entrusts the accounting function to a body other than the managing authority in accordance with Article 66(2), the body concerned shall also be identified as a programme authority. Those same authorities may be responsible for more than one programme.

2. The audit authority shall be a public authority, functionally independent from the auditees.

3. The managing authority may identify one or more intermediate bodies to carry out certain tasks under its responsibility. Arrangements between the managing authority and intermediate bodies shall be recorded in writing.

4. Member States shall ensure that the principle of separation of functions between and within the programme authorities is respected.

5. Where a cohesion policy programme contributes to a programme co-fund as referred to in Article [8] of Regulation EU (…) [*Horizon Europe Rules for Participation*], the body implementing the programme co-fund shall be identified as an intermediate body by the managing authority of the relevant programme, in line with paragraph 3.

6. The Member State, at its own initiative, may set up a coordination body to liaise with and provide information to the Commission and to coordinate activities of the programme authorities in that Member State.[34]

[34] *New recital:* "(x) The Member State, at its own initiative, should have the possibility to identify a coordinating body to liaise with and provide information to the Commission and to coordinate activities of the programme authorities in that Member State."

CHAPTER II

Standard management and control systems

Article 66

Functions of the managing authority

1. The managing authority shall be responsible for managing the programme with a view to delivering the objectives of the programme. In particular, it shall have the following functions:

   (a) select operations in accordance with Article 67 with the exception of operations referred to in Article 27(3)(d);

   (b) carry out programme management tasks in accordance with Article 68;

   (c) support the work of the monitoring committee in accordance with Article 69;

   (d) supervise intermediate bodies;

   (e) record and store electronically the data on each operation necessary for monitoring, evaluation, financial management, verifications and audits, and shall ensure the security, integrity and confidentiality of data and the authentication of the users.

2. The Member State may entrust the accounting function referred to in Article 70 to the managing authority or to another body.

3. For programmes supported by the AMIF, the ISF and the BMVI, the accounting function shall be carried out by the managing authority or under its responsibility.

4. Annex XYZ sets out the electronic data to be recorded and stored referred to in point (e) of paragraph 1.

Article 67

Selection of operations by the managing authority

1. For the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure gender equality and take account of the Charter of Fundamental Rights of the European Union and the principle of sustainable development and of the Union policy on the environment in accordance with Articles 11 and 191(1) of the TFEU.

   The criteria and procedures shall ensure the prioritisation of operations to be selected with a view to maximise the contribution of Union funding to the achievement of the objectives of the programme[35].

2. *deleted*

3. In selecting operations, the managing authority shall:

   (a) ensure that selected operations comply with the programme and provide an effective contribution to the achievement of its specific objectives;

   (b) ensure that selected operations which fall within the scope of an enabling condition are consistent with the corresponding strategies and planning documents established for the fulfilment of that enabling condition;

   In the case of policy objective one, as set out in Article 2(1)(a) of the [ERDF and CF Regulation], only operations corresponding to the specific objectives referred to in Article 2(1)(a)(i) and (iv) of that Regulation shall be consistent with the corresponding smart specialisation strategies.

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[35] *Recital 48 to be complemented as follows:* (48) Since the managing authority bears the main responsibility for the effective and efficient implementation of the Funds and therefore fulfils a substantial number of functions, its functions in relation to the selection of operations, programme management and support for the monitoring committee should be set out in detail. Procedures for the selection of operations can be competitive or non-competitive provided that operations selected maximise contribution of the Union funding and are in line with the horizontal principles.

(c) satisfy itself that the beneficiary has the necessary financial resources and mechanisms to cover operation and maintenance costs for operations comprising investment in infrastructure or productive investment;

(d) satisfy itself that where the operations have started before the submission of an application for funding to the managing authority, applicable law has been complied with;

(e) ensure that selected operations fall within the scope of the Fund concerned and, with the exception of the EMFF, are attributed to a type of intervention;

(f) ensure that operations do not include activities which were part of an operation subject to relocation in accordance with Article 60 or which would constitute a transfer of a productive activity in accordance with Article 59(1)(a);

(g) ensure that selected operations are not directly affected by a reasoned opinion by the Commission in respect of an infringement under Article 258 of the TFEU that puts at risk the legality and regularity of expenditure;

(h) ensure that, for investments in infrastructure with an expected lifespan of at least five years, an assessment of expected impacts of climate change is carried out.

4. The managing authority shall ensure that the beneficiary is provided with a document setting out all the conditions for support for each operation including the specific requirements concerning the products or services to be delivered, the financing plan, the time-limit for its execution and where applicable, the method to be applied for determining the costs of the operation and the conditions for payment of the support.

5. For operations awarded a Seal of Excellence certification, or selected under the programme co-fund under Horizon Europe, the managing authority may decide to grant support from the ERDF or the ESF+ directly, provided that such operations meet the requirements set out in points (a), (b) and (e) of paragraph 3.

The co-financing rate of the instrument providing the Seal of Excellence certification or the programme co-fund shall apply and shall be set out in the document referred in paragraph 4.

6. When the managing authority selects an operation of strategic importance, it shall inform the Commission and provide relevant information to the Commission about that operation.

Article 68

Programme management by the managing authority

1. The managing authority shall:

(a) carry out management verifications to verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the programme and the conditions for support of the operation, and:

(i) where costs are to be reimbursed pursuant to Article 48(1)(a), that the amount of expenditure claimed by the beneficiaries in relation to those costs has been paid and that beneficiaries maintain separate accounting records or use appropriate accounting codes for all transactions relating to the operation;

(ii) where costs are to be reimbursed pursuant to points (b), (c) and (d) of Article 48(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;

(b) ensure, subject to the availability of funding, that a beneficiary receives the amount due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary; the deadline may be interrupted if information submitted by the beneficiary does not allow the managing authority to establish whether the amount is due;

(c) have effective and proportionate anti-fraud measures and procedures in place, taking into account the risks identified;

(d) prevent, detect and correct irregularities;

(e) confirm that the expenditure entered into the accounts is legal and regular;

(f) draw up the management declaration in accordance with the template set out in Annex XV;

For point (b) of the first sub-paragraph, no amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

For PPP operations, the managing authority shall carry out payments to an escrow account set up for that purpose in the name of the beneficiary for use in accordance with the PPP agreement.

2. Management verifications referred to in point (a) of paragraph 1 shall be risk-based and proportionate to the risks identified ex-ante and in writing.

Management verifications shall include administrative verifications in respect of payment claims by beneficiaries and on-the-spot verifications of operations. They shall be carried out at the latest before preparation of the accounts in accordance with Article 92.

3. Where the managing authority is also a beneficiary under the programme, arrangements for the management verifications shall ensure separation of functions.

4. By way of derogation from paragraph 2, the ETC Regulation may establish specific rules on management verifications applicable to Interreg programmes.

Article 69

Support of the work of the monitoring committee by the managing authority

The managing authority shall:

(a) provide the monitoring committee in a timely manner with all information necessary to carry out its tasks;

(b) ensure the follow-up of the decisions and recommendations of the monitoring committee.

Article 70

The accounting function

1. The accounting function shall consist of the following tasks:

   (a) drawing up and submitting payment applications to the Commission in accordance with Articles 85 and 86;

   (b) drawing up and submitting the accounts in accordance with Article 92 and confirming completeness, accuracy and veracity of the accounts;

   (ba) keeping electronic records of all the elements of the accounts and payment applications;

   (c) converting the amounts of expenditure incurred in another currency into euro by using the monthly accounting exchange rate of the Commission in the month during which the expenditure is registered in the accounting systems of the body responsible for carrying out the tasks set out in this Article.

2. The accounting function shall not comprise verifications at the level of beneficiaries.

3. By way of derogation from point (c) of paragraph 1, the ETC Regulation may establish a different method to convert the amounts of expenditure incurred in another currency into euro.

Article 71

Functions of the audit authority

1. The audit authority shall be responsible for carrying out system audits, audits on operations and audits of accounts in order to provide independent assurance to the Commission regarding the effective functioning of the management and control systems and the legality and regularity of the expenditure included in the accounts submitted to the Commission.

2. Audit work shall be carried out in accordance with internationally accepted audit standards.

3. The audit authority shall draw up and submit to the Commission:

   (a) an annual audit opinion in accordance with Article 63(7) of the Financial Regulation and with the template set out in Annex XVI and based on all audit work carried out, covering the following distinct components:

      (i) the completeness, veracity and accuracy of the accounts;

      (ii) the legality and regularity of the expenditure included in the accounts submitted to the Commission;

      (iii) the effective functioning of the management and control system.

   (b) an annual control report fulfilling the requirements of Article 63(5)(b) of the Financial Regulation, in accordance with the template set out in Annex XVII and, supporting the audit opinion referred to in point (a) and setting out a summary of the findings, including an analysis of the nature and extent of errors and deficiencies in the systems as well as the proposed and implemented corrective actions and the resulting total error rate and residual error rate for the expenditure entered in the accounts submitted to the Commission.

4. Where programmes are grouped for the purpose of audits of operations pursuant to Article 73(2), the information required under paragraph (3)(b) may be grouped in a single report.

5. The audit authority shall transmit to the Commission system audit reports as soon as the contradictory procedure with the relevant auditees is concluded.

6. The Commission and the audit authorities shall meet on a regular basis and at least once a year, unless otherwise agreed, to examine the audit strategy, the annual control report, the audit opinion, to coordinate their audit plans and methods and to exchange views on issues relating to the improvement of management and control systems.

Article 72

Audit strategy

1. The audit authority shall prepare an audit strategy based on a risk assessment, taking account of the management and control system description provided for in Article 63(9), covering system audits and audits of operations. The audit strategy shall include system audits of newly identified managing authorities and authorities in charge of the accounting function and such audits shall be carried out within twenty-one months of the Commission's decision approving the programme or the amendment of the programme identifying such an authority. The audit strategy shall be prepared in accordance with the template set out in Annex XVIII and shall be updated annually following the first annual control report and audit opinion provided to the Commission. It may cover one or more programmes.

2. The audit strategy shall be submitted to the Commission upon request.

Article 73

Audits of operations

1. Audits of operations shall cover expenditure declared to the Commission in the accounting year on the basis of a sample. That sample shall be representative and based on statistical sampling methods.

2. Where the population consists of less than 300 sampling units, a non-statistical sampling method may be used on the professional judgement of the audit authority. In such cases, the size of the sample shall be sufficient to enable the audit authority to draw up a valid audit opinion. The non-statistical sampling method shall cover a minimum of 10 % of the sampling units in the population of the accounting year, selected randomly.

   The statistical sample may cover one or more programmes receiving support from the ERDF, the Cohesion Fund and the ESF+ and, subject to stratification where appropriate, one or more programming periods according to the professional judgement of the audit authority.

   The sample of operations supported by the AMIF, the ISF and the BMVI and by the EMFF shall cover operations supported by each Fund separately.

3. Audits of operations shall include on-the-spot verification of the physical implementation of the operation only where it is required by the type of operation concerned.

   The ESF+ Regulation may set out specific provisions for programmes or priorities under Article [4(1)(xi)] of the ESF+ Regulation.

   Audits shall be conducted on the basis of the rules in force at the time when the activities within the operation were carried out.

4. The Commission is empowered to adopt a delegated act in accordance with Article 107 to supplement this Article by setting out standardised off-the-shelf sampling methodologies, and modalities to cover one or more programming periods.

Article 74

Single audit arrangements

1. When carrying out audits, the Commission and the audit authorities shall take due account of the principles of single audit and proportionality in relation to the level of risk to the budget of the Union. In order to avoid duplication of audits and management verifications of the same expenditure declared to the Commission with the objective of minimising the cost of management verifications and audits and the administrative burden on beneficiaries.

   The Commission and audit authorities shall first use all information and records referred to in Article 66(1)(e), including results of management verifications and only request and obtain additional documents and audit evidence from the beneficiaries concerned where, based on their professional judgement, this is required to support robust audit conclusions.

2. For programmes for which the Commission concludes that the opinion of the audit authority is reliable, the Commission's own audits shall be limited to auditing the work of the audit authority.

3. 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+, EUR 200 000 for the EMFF, the AMIF, the ISF and the BMVI 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 where there has already been an audit in that year by the Court of Auditors, provided that the results of that Court of Auditors' audit for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.

4. Nothwithstanding the provisions of paragraph 3, any operation may be subject to more than one audit, if the audit authority concludes based on its professional judgment, that it is not possible to draw up a valid audit opinion.

5. Paragraphs 2 and 3 shall not apply where:

(a) there is a specific risk of irregularity or an indication of fraud;

(b) there is a need to re-perform the work of the audit authority for obtaining assurance as to its effective functioning;

(c) there is evidence of a serious deficiency in the work of the audit authority.

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36 *Recital (51) is complemented as follows:* "The audit authority should carry out audits and ensure that the audit opinion provided to the Commission is reliable. That audit opinion should provide assurance to the Commission on three points, namely the legality and regularity of the declared expenditure, the effective functioning of the management and control systems and the completeness, accuracy and veracity of the accounts. Where an audit based on internationally accepted audit standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of a Union contribution, that audit should form the basis of the overall assurance the audit authority provides to the Commission, insofar as there is sufficient evidence of the independence and competence of the auditor in accordance with Article 127 of Regulation No. 2018/1046."

Article 75

Management verifications and audits of financial instruments

1. The managing authority shall carry out on-the-spot management verifications in accordance with Article 68(1) only at the level of bodies implementing the financial instrument and, in the context of guarantee funds, at the level of bodies delivering the underlying new loans.

2. The managing authority shall not carry out on-the-spot verifications at the level of the European Investment Bank ('EIB') or other international financial institutions in which a Member State is a shareholder.

   However, the EIB or other internationally financial institutions in which a Member State is a shareholder shall provide control reports supporting the payment applications to the managing authority.

3. The audit authority shall carry out system audits and audits of operations in accordance with Articles 71, 73 or 77 at the level of bodies implementing the financial instrument and, in the context of guarantee funds, at the level of bodies delivering the underlying new loans.

4. The audit authority 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.

   However, the EIB or other international financial institutions in which a Member State is a shareholder shall provide to the Commission and to the audit authority an annual audit report drawn up by their external auditors by the end of each calendar year. This report shall cover the elements included in Annex XVII, and constitute the basis for the Audit Authority's work.

5. The EIB or other international financial institutions shall provide to the programme authorities all the necessary documents to enable them to fulfil their obligations.

Article 76

Availability of documents

1. Without prejudice to the rules governing State aid, the managing authority shall ensure that all supporting documents related to an operation supported by the Funds are kept at the appropriate level for a five-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made.

2. This time period shall be interrupted either in the case of legal proceedings or by a request of the Commission.

CHAPTER III

Reliance on national management systems

Article 77

Enhanced proportionate arrangements

The Member State may apply the following enhanced proportionate arrangements for the management and control system of a programme when the conditions set out in Article 78 are fulfilled:

(a) by way of derogation from Article 68(1)(a) and 68(2), the managing authority may apply only national procedures to carry out management verifications;

(b) by way of derogation from Article 71(1) regarding system audits and Article 73(1) and (3) regarding audits of operations, the audit authority may limit its audit activity to audits of operations covering a sample based on a statistical selection of 30 sampling units for the programme or group of programmes concerned;

(c) the Commission, shall limit its own audits to a review of the work of the audit authority through re-performance at its level only, unless available information suggests a serious deficiency in the work of the audit authority.

For the purposes of management verifications referred to in point (a), the managing authority may rely on verifications carried out by external bodies provided that it has sufficient evidence of the competence of those bodies.

For point (b), where the population consists of less than 300 sampling units, the audit authority may apply a non-statistical sampling method in accordance with Article 73(2).

Article 78

Conditions for application of enhanced proportionate arrangements

1. The Member State may apply the enhanced proportionate arrangements set out in Article 77 at any time during the programming period, where the Commission has confirmed in its published annual activity reports for the last two years preceding the Member State's decision to apply the provisions of this Article, that the programme's management and control system is functioning effectively and that the total error rate for each year is below 2 %. When assessing the effective functioning of the programme's management and control system, the Commission shall take into account the participation of the Member State concerned in the enhanced cooperation on the European Public Prosecutor's Office.

   Where a Member State decides to use this option, it shall notify the Commission on the application of the proportionate arrangements set out in Article 77 which shall apply from the start of the subsequent accounting year.

2. At the start of the programming period, the Member State may apply the arrangements referred to in Article 77, provided that the conditions set out in paragraph 1 of this Article are met with respect to a similar programme implemented in 2014-2020 and where the management and control arrangements established for the 2021-2027 programme build largely on those for the previous programme. In such cases, the enhanced proportionate arrangements will apply from the start of the programme.

3. The Member State shall establish or update accordingly the description of the management and control system and the audit strategy described in Articles 63(9) and 72.

Article 79

Adjustment during the programming period

1. Where the Commission or the audit authority conclude, based on the audits carried out and the annual control report, that the conditions set out in Article 78 are no longer fulfilled, the Commission shall request the audit authority to carry out additional audit work in accordance with Article 63(3) and satisfy itself that remedial actions are taken.

2. Where the subsequent annual control report confirms that the conditions continue not to be fulfilled, thus limiting the assurance provided to the Commission on the effective functioning of the management and control systems and of the legality and regularity of expenditure, the Commission shall request the audit authority to carry out system audits.

3. The Commission may, after having given to the Member State the opportunity to present its observations, inform the Member State that the enhanced proportionate arrangements set out in Article 77 shall no longer be applied from the start of the subsequent accounting year.

TITLE VII

FINANCIAL MANAGEMENT, SUBMISSION AND EXAMINATION OF ACCOUNTS AND FINANCIAL CORRECTIONS

CHAPTER I

Financial management

SECTION I

GENERAL ACCOUNTING RULES

Article 80

Budgetary commitments

1. The decision approving the programme in accordance with Article 18 shall constitute a financing decision within the meaning of [Article 110(3)] of the Financial Regulation and its notification to the Member State concerned shall constitute a legal commitment.

   That decision shall specify the total Union contribution per Fund and per year. However, for programmes under the Investment for jobs and growth goal, an amount corresponding to 50% for the years 2026 and 2027 ('flexibility amount') per programme in each Member State shall be retained and shall only be definitively allocated to the programme after the adoption of the Commission decision following the mid-term review as referred to in Article 14.

2. The budgetary commitments of the Union in respect of each programme shall be made by the Commission in annual instalments for each Fund during the period between 1 January 2021 and 31 December 2027.

3. By way of derogation from Article 111(2) of the Financial Regulation, the budgetary commitments for the first instalment shall follow the adoption of the programme by the Commission.

Article 81

Use of the euro

Any amounts set out in programmes, reported or declared to the Commission by Member States shall be denominated in euro.

Article 82

Repayment

1. Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with [Article 98 of the Financial Regulation]. The due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

SECTION II

RULES FOR PAYMENTS TO MEMBER STATES

Article 83

Types of payments

Payments shall take the form of pre-financing, interim payments and payments of the balance of the accounts for the accounting year.

Article 84

Pre-financing

1. The Commission shall pay pre-financing based on the total support from the Funds set out in the decision approving the programme pursuant to Article 17(3)(f)(i).

2. [The pre-financing for each Fund shall be paid in yearly instalments before 1 July of each year, subject to availability of funds, as follows:

   (a) 2021: 0.5 %;

   (b) 2022: 0.5 %;

   (c) 2023: 0.5 %;

   (d) 2024: 0.5 %;

   (e) 2025: 0.5 %;

   (f) 2026: 0.5 %

   Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.]

3. By way of derogation from paragraph 2, for Interreg programmes, specific rules on pre-financing shall be set out in the ETC Regulation.

4. The amount paid as pre-financing shall be cleared from the Commission accounts no later than the final accounting year.

5. Any interest generated by the pre-financing shall be used for the programme concerned in the same way as the Funds.

Article 85

Payment applications

1. The Member State shall submit a maximum of seven payment applications per programme, per Fund and per accounting year. Every year, one payment application may be submitted at any time in each time period between the following dates: 28 February, 31 May, 31 July, 31 October, 30 November and 31 December[37] and one additional payment application per programme, per Fund may be submitted in one of those time periods.

   The last payment application submitted by 31 July shall be deemed to be the final payment application for the accounting year that has ended 30 June.

   The first sub-paragraph shall not apply to Interreg Programmes.

2. Payment applications shall not be admissible unless the latest assurance package due has been submitted.

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[37] The change in the wording of Article 85(1) requires an amendment to recital 55: "To reduce the administrative burden for Member States as well as for the Commission, a schedule of payment applications should be established. Commission payments should be subject to a 5% retention until the payment of the annual balance of accounts when the Commission is able to conclude that the accounts are complete, accurate and true."

3. Payment applications shall be submitted to the Commission in accordance with the template set out in Annex XIX and include, for each priority and, where relevant, by category of region:

(a) the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations, as entered in the system of the body carrying out the accounting function;

(b) the amount for technical assistance calculated in accordance with point (b) of Article 30(5), where applicable;

(c) the total amount of public contribution made or to be made, as entered in the accounting systems of the body carrying out the accounting function;

4. By way of derogation from point (a) of paragraph 3, the following shall apply:

(a) where the Union contribution is made pursuant to point (a) of Article 46, the amounts included in a payment application shall be the amounts justified by the progress in the fulfilment of conditions, or achievement of results, in accordance with the decision referred to in Article 89(2) or the delegated act referred to in Article 89(4);

(b) where the Union contribution is made pursuant to points (c), (d) and (e) of Article 46, the amounts included in a payment application shall be the amounts determined in accordance with the decision referred to in Article 88(3) or the delegated act referred to in Article 88(4);

(c) for the forms of grants listed in points (b), (c) and (d) of Article 48(1), the amounts included in a payment application shall be the costs calculated on the applicable basis.

4.bis By way of derogation from paragraph 3, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting 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;

(c) those advances are covered by expenditure paid by beneficiaries 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 [2029], whichever is earlier, failing which the next payment application shall be corrected accordingly.

Each payment application which includes advances of this type shall separately disclose the total amount paid from the programme as advances, the amount which has been covered by expenditure paid by beneficiaries within three years of the payment of the advance in accordance with point (c) and the amount which has not been covered by expenditure paid by beneficiaries and for which the three year period has not yet elapsed.

5. By way of derogation from point (c) of paragraph 3, in the case of aid schemes under Article 107 of the 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.

Article 86

Specific elements for financial instruments in payment applications

1. Where financial instruments are implemented in accordance with Article 53(1), payment applications submitted in accordance with Annex XIX shall include the total amounts disbursed or, in the case of guarantees, the amounts set aside for guarantee contracts, by the managing authority to final recipients as referred to in points (a), (b) and (c) of Article 62(1).

2. Where financial instruments are implemented in accordance with Article 53(2), payment applications that include expenditure for financial instruments shall be submitted in accordance with the following conditions:

   (a) the amount included in the first payment application shall have been paid to the financial instruments and may be up to 35 % of the total amount of programme contributions committed to the financial instruments under the relevant funding agreement, in accordance with the relevant priority and category of region, if applicable;

   (b) the amount included in subsequent payment applications submitted during the eligibility period shall include the eligible expenditure as referred to in Article 62(1) (a), (b) and (c);

   (c) the amounts included in the first and subsequent payment applications shall include the amount of management costs and fees established in line with Article 62(3).

3. The amount included in the first payment application, referred to in point (a) of paragraph 2, shall be cleared from Commission accounts no later than the final accounting year.

   It shall be disclosed separately in payment applications.

Article 87

Common rules for payments

1. Without prejudice to Article 11 (5) and (6) and subject to available funding, the Commission shall make interim payments no later than 60 days after the date on which a payment application is received by the Commission.

2. Each payment shall be attributed to the earliest open budget commitment of the Fund and category of region concerned. The Commission shall reimburse as interim payments 95% of the amounts included in the payment application, which results from applying the co-financing rate for each priority to the total eligible expenditure or to the public contribution as appropriate. The Commission shall determine the remaining amounts to be reimbursed or to be recovered when calculating the balance of the accounts in accordance with Article 94.

3. The support from the Funds to a priority in interim payments shall not be higher than the amount of the support from the Funds for the priority laid down in the decision of the Commission approving the programme.

4. Where the Union contribution takes the form of point (a) of Article 46 or where the grants take the form listed in points (b), (c) and (d) of Article 48(1) the Commission shall not pay more than the amount requested by the Member State.

5. In addition, the support from the Funds to a priority in the payment of the balance of the final accounting year shall not exceed any of the following amounts:

   (a) the public contribution declared in payment applications;

   (b) support from the Funds paid or to be paid to beneficiaries;

   (c) the amount requested by the Member State.

6. On the request of a Member State, interim payments may be increased by 10 % above the co-financing rate applicable to each priority for the Funds, if a Member State meets one of the following conditions after [date of adoption of this Regulation]:

(a) the Member State receives a loan from the Union under Council Regulation (EU) No 407/2010;

(b) the Member State receives medium-term financial assistance under the ESM as established by the Treaty establishing the ESM of 2 February 2012 or as referred to in Council Regulation (EC) No 332/2002[38] conditional on the implementation of a macro-economic adjustment programme;

(c) financial assistance is made available to the Member State conditional on the implementation of a macroeconomic adjustment programme as specified in Regulation (EU) No 472/2013[39] of the European Parliament and of the Council.

The increased rate, which may not exceed 100 %, shall apply to requests for payments until the end of the calendar year in which the related financial assistance comes to an end.

7. Paragraph 6 shall not apply to Interreg programmes.

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

39 Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ L 140, 27.5.2013, p. 1).

Article 88

Union contribution based on unit costs, lump sums and flat rates

1. The Commission may reimburse the Union contribution to a programme on the basis of unit costs, lump sums and flat rates in accordance with Article 46, either based on the amounts and rates approved by a Commission decision in accordance with paragraph 2 or set out in the delegated act referred to in paragraph 4.

2. In order to make use of a Union contribution to the programme based on unit costs, lump sums and flat rates, Member States shall submit a proposal to the Commission in accordance with the templates set out in Annexes V and VI, as part of the programme or of a request for its amendment.

   The amounts and rates proposed by the Member State shall be established on the basis of the following:

   (a) a fair, equitable and verifiable calculation method based on any of the following:

      (i) statistical data, other objective information or an expert judgement;

      (ii) verified historical data;

      (iii) the application of usual cost accounting practices;

   (b) draft budgets;

   (c) the rules on corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation;

   (d) the rules on corresponding unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of operation.

   The Commission decision approving the programme or its amendment shall set out the types of operations covered by the reimbursement based on unit costs, lump sums and flat rates, the definition and the amounts covered by unit costs, lump sums and flat rates and the methods for adjustment of the amounts.

3. Member States shall reimburse beneficiaries for the purposes of this Article. That reimbursement may take any form of support.

Commission or Member States audits and Member States management verfications shall exclusively aim at verifying that the conditions for reimbursement by the Commission have been fulfilled.

4. In addition, the Commission is empowered to adopt a delegated act in accordance with Article 107 to supplement this Article by defining EU level unit costs, lump sums, flat rates, their amounts and adjustment methods in the ways referred to in points (a) to (d) of the second sub-paragraph of paragraph 2.

5 (new). This Article shall not apply to the Union contribution for technical assistance reimbursed pursuant to point (e) of Article 46.

Article 89[40]

Union contribution based on financing not linked to costs

1. The Commission may reimburse the Union contribution to all or parts of a priority of programmes based on financing not linked to costs in accordance with Article 46, either based on the amounts approved by a Commission decision in accordance with paragraph 2 or set out in the delegated act referred to in paragraph 4.

2. In order to make use of a Union contribution to the programme based on financing not linked to costs, Member States shall submit a proposal to the Commission in accordance with the templates set out in Annexes V and VI, as part of the programme or of a request for its amendment. The proposal shall contain the following information:

   (a) identification of the priority concerned and the overall amount covered by the financing not linked to costs; a description of the part of the programme and the type of operations covered by the financing not linked to costs;

   (b) a description of the conditions to be fulfilled or of the results to be achieved and a timeline;

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[40] Recital 26 is amended as follows:

(26) It is opportune to clarify that, where a Member State proposes to the Commission that a priority of a programme or part thereof is supported through a financing scheme not linked to costs, the actions, deliverables and conditions agreed should be related to concrete investments undertaken under the shared management programmes in that Member State or region. In that context, when the Member State proposes and when the Commission approves such a scheme, the respect of the principle of sound financial management should be ensured. In particular, as regards the appropriateness of the amounts linked to the fulfilment of the respective conditions or the achievement of results, the Commission should ensure that the resources employed are adequate for the investments undertaken.

Where a financing scheme not linked to costs is used in a programme, underlying costs linked to the implementation of that scheme should not be subject to any verifications or audits in light of the ex-ante agreement of the Commission in the programme or a delegated act on the amounts linked to the fulfilment of the conditions or the achievement of results.

Verifications and audits should be limited to checking that the conditions or results triggering the reimbursement of the Union contribution are fulfilled.

(c) intermediate deliverables triggering reimbursement by the Commission;

(d) measurement units;

(e) the schedule for reimbursement by the Commission and related amounts linked to the progress in the fulfilment of conditions or achievement of results;

(f) the arrangements for verification of the intermediate deliverables and of the fulfilment of conditions or achievement of results;

(g) the methods for adjustment of the amounts, where applicable;

(h) the arrangements to ensure the audit trail in accordance with Annex XI demonstrating the fulfilment of conditions or achievement of results;

(i) the envisaged reimbursement to the beneficiary(-ies) within the priority or parts of a priority of programmes concerned by this Article.

The Commission decision approving the programme or the request for its amendment shall set out all the elements listed in paragraph 1.

3. Member States shall reimburse beneficiaries for the purposes of this Article. That reimbursement may take any form of support.

Commission or Member States audits and Member States management verfications shall exclusively aim at verifying that the conditions for reimbursement by the Commission have been fulfilled or the results have been achieved.

4. The Commission is empowered to adopt a delegated act in accordance with Article 107 to supplement this Article by establishing amounts for EU level financing not linked to costs by type of operation, the methods for adjustment of the amounts and the conditions to be fulfilled or the results to be achieved.

SECTION III

INTERRUPTIONS AND SUSPENSIONS

Article 90

Interruption of the payment deadline

1. The Commission may interrupt the payment deadline for payments, except for pre-financing, for a maximum period of six months where any of the following conditions is met:

   (a) there is evidence to suggest a serious deficiency[41] and for which corrective measures have not been taken;

   (b) the Commission has to carry out additional verifications following receipt of information that expenditure in a payment application may be linked to an irregularity[42].

2. The Member State may agree to extend the interruption period by three months.

3. The Commission shall limit the interruption to the part of the expenditure affected by the elements referred to in paragraph 1, unless it is not possible to identify the part of the expenditure affected. The Commission shall inform the Member State and the managing authority in writing of the reason for interruption and shall ask them to remedy the situation. The Commission shall end the interruption as soon as the measures remedying the elements referred to in paragraph 1 have been taken.

4. The Fund-specific rules for the EMFF may lay down specific bases for interruption of payments linked to non-compliance with rules applicable under the Common Fisheries Policy.

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41 as defined in Article 2(30).
42 as defined in Article 2(29).

Article 91

Suspension of payments

1. The Commission may suspend all or part of payments, except for pre-financing, after having given the Member State the opportunity to present its observations, if any of the following conditions is met:

   (a) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 90;

   (b) there is a serious deficiency[43];

   (c) the expenditure in payment applications is linked to an irregularity[44] that has not been corrected;

   (d) there is a reasoned opinion by the Commission in respect of an infringement under Article 258 of the TFEU covering a matter having a sufficient direct link with the expenditure so as to put at risk its legality and regularity;

   (e) [the Member State has failed to take the necessary action in accordance with Article 15(6).][45]

2. The Commission shall end the suspension of all or part of payments when the Member State has taken the measures remedying the elements referred to in paragraph 1.

3. The Fund-specific rules for the EMFF may lay down specific bases for suspension of payments linked to non-compliance with rules applicable under the Common Fisheries Policy.

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43 as defined in Article 2(30).
44 as defined in Article 2(29).
45 N.B.: This provision is bracketed waiting for a decision on Article 15 CPR.

CHAPTER II

Submission and examination of accounts

Article 92

Content and submission of accounts

1. For each accounting year for which payment applications have been submitted, the Member State shall submit to the Commission by 15 February, the following documents ('the assurance package') which shall cover the preceding accounting year as defined in Article 2(28):

   (a) the accounts in accordance with the template set out in Annex XX;

   (b) the management declaration referred to in Article 68(1)(f) in accordance with the template set out in Annex XV;

   (c) the audit opinion referred to in Article 71(3)(a) in accordance with the template set out in Annex XVI;

   (d) the annual control report referred to in Article 71(3)(b) in accordance with the template set out in Annex XVII.

2. The deadline referred to in paragraph 1 may exceptionally be extended by the Commission to 1 March, upon communication by the Member State concerned.

3. The accounts shall include at the level of each priority and, where applicable, fund and, where relevant, category of region:

   (a) the total amount of eligible expenditure entered into the accounting systems of the body carrying out the accounting function which has been included in the final payment application for the accounting year and the total amount of the corresponding public contribution made or to be made;

   (b) the amounts withdrawn during the accounting year;

   (c) the amounts of public contribution paid to financial instruments;

(d) for each priority, an explanation on any differences between the amounts declared pursuant to point (a) and the amounts declared in payment applications for the same accounting year.

4. The accounts shall not be admissible if Member States have not undertaken the necessary corrections to reduce the residual error rate on the legality and regularity of the expenditure included in the accounts to less than 2%.

5. Member States shall in particular deduct from the accounts:

(a) the irregular expenditure which has been subject to financial corrections in accordance with Article 97;

(b) the expenditure which is subject to an ongoing assessment of its legality and regularity;

(c) other amounts as necessary to reduce to 2 % the residual error rate of the expenditure declared in the accounts.

The Member State may include expenditure under point (b) of the first sub-paragraph in a payment application in subsequent accounting years once its legality and regularity is confirmed.

6. The Member State may replace irregular amounts which it has detected after the submission of the accounts by making the corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Article 98.

7. As part of the assurance package, the Member State shall submit for the last accounting year the final performance report referred to in Article 38.

Article 93

Examination of accounts

The Commission shall satisfy itself that the accounts are complete, accurate and true by 31 May of the year following the end of the accounting year unless Article 96 applies.

Article 94

Calculation of the balance

1. When determining the amount chargeable to the Funds for the accounting year and the consequent adjustments in relation to the payments to the Member State, the Commission shall take into account:

   (a) the amounts in the accounts referred to in point (a) of Article 92(3) and to which the co-financing rate for each priority is to be applied;

   (b) the total amount of interim payments made by the Commission during that accounting year.

2. Where there is an amount recoverable from the Member State, it shall be subject to a recovery order issued by the Commission which shall be executed, where possible, by offsetting against amounts due to the Member State in subsequent payments to the same programme. Such a recovery shall not constitute a financial correction and shall not reduce support from the Funds to the programme. The amount recovered shall constitute assigned revenue in accordance with Article [21(3)] of the Financial Regulation.

Article 95

Procedure for the examination of accounts

1. The procedure set out in Article 96 shall apply in either of the following cases:

   (a) the audit authority has provided a qualified or adverse audit opinion due to reasons linked to the completeness, accuracy and veracity of the accounts;

   (b) the Commission has evidence putting into question the reliability of an unqualified audit opinion.

2. In all other cases, the Commission shall calculate the amounts chargeable to the Funds in accordance with Article 94 and make the respective payments or recoveries before 1 July. That payment or recovery shall constitute the acceptance of accounts.

Article 96

Contradictory procedure for the examination of accounts

1. If the audit authority provides an audit opinion which is qualified or adverse due to reasons linked to the completeness, accuracy and veracity of the accounts, the Commission shall ask the Member State to revise the accounts and to resubmit the documents referred to in Article 92(1) within one month.

   Where by the time limit set out in the first sub-paragraph:

   (a) the audit opinion is unqualified, Article 94 shall apply and the Commission shall pay any additional amount due or proceed to a recovery within two months;

   (b) the audit opinion is still qualified or documents have not been re-submitted by the Member State, paragraphs 2, 3 and 4 shall apply.

2. If the audit opinion remains qualified due to reasons linked to the completeness, accuracy and veracity of the accounts or if the audit opinion remains unreliable, the Commission shall inform the Member State on the amount chargeable to the Funds for the accounting year.

3. Where the Member State agrees with this amount within one month, the Commission shall pay any additional amount due or proceed to a recovery in accordance with Article 94 within two months.

4. Where the Member State does not agree with the amount referred to in paragraph 2, the Commission shall establish the amount chargeable to the Funds for the accounting year. Such an act shall not constitute a financial correction and shall not reduce support from the Funds to the programme. The Commission shall pay any additional amount due or proceed to a recovery in accordance with Article 94 within two months.

5. With regard to the final accounting year, the Commission shall pay or recover the annual balance of the accounts for programmes supported by the Funds no later than two months after the date of acceptance of the final performance report as referred to in Article 38.

CHAPTER III

Financial corrections

Article 97

Financial corrections by Member States

1. Member States shall protect the Union budget and apply financial corrections by cancelling all or part of the support from the Funds to an operation or programme when expenditure declared to the Commission is found to be irregular.

2. Financial corrections shall be recorded in the accounts for the accounting year in which the cancellation is decided.

3. The support from the Funds cancelled may be reused by the Member State within the programme concerned except for an operation that was subject of that correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

4. The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Member States linked to non-compliance with rules applicable under the Common Fisheries Policy.

5. By way of derogation from paragraphs 1 to 3, in operations comprising financial instruments, a contribution cancelled in accordance with this Article, as a result of an individual irregularity, may be re-used 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: 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 body implementing the specific fund, where a financial instrument is implemented through a structure with a holding fund, only for other bodies implementing specific funds.

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

Where a financial correction is made for a systemic irregularity, the contribution cancelled shall not be reused for any operation affected by the systemic irregularity.

6. The bodies implementing financial instruments shall reimburse to Member States programme contributions affected by irregularities, together with interest and any other gains generated by those contributions.

The bodies implementing financial instruments shall not reimburse to Member States the amounts referred to in the first subparagraph provided that those bodies demonstrate for a given irregularity that the following cumulative conditions are fulfilled:

(a) the irregularity occurred at the level of final recipients or, in the case of a holding fund, at the level of bodies implementing specific funds or final recipients;

(b) the bodies implementing financial instruments performed their obligations, in relation to the programme contributions affected by the irregularity, in accordance with applicable law and acted with the degree of professional care, transparency and diligence expected from a professional body experienced in implementing financial instruments;

(c) the amounts affected by the irregularity could not be recovered notwithstanding that the bodies implementing financial instruments pursued all applicable contractual and legal measures with due diligence.

Article 98

Financial corrections by the Commission

1. The Commission shall make financial corrections by reducing support from the Funds to a programme where it concludes that:

   (a) there is a serious deficiency[46] which has put at risk the support from the Funds already paid to the programme;

   (b) expenditure contained in accepted accounts is irregular and was not detected and reported by the Member State;

   (c) the Member State has not complied with its obligations under Article 91 prior to the opening of the financial correction procedure by the Commission.

   Where the Commission applies flat-rate or extrapolated financial corrections, this shall be carried out in accordance with Annex XXI[47].

2. Before taking a decision on a financial correction, the Commission shall inform the Member State of its conclusions and give the Member State the opportunity to present its observations and to demonstrate that the actual extent of irregularity is less than the Commission's assessment within two months. The deadline can be extended if mutually agreed.

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46 as defined in Article 2(30).

47 Recital 57 will be amended as follows:

(57) In order to safeguard the financial interests and the budget of the Union proportionate measures should be established and implemented at the level of Member States and of the Commission. The Commission should be able to interrupt payments deadlines, suspend interim payments and apply financial corrections where the respective conditions are fulfilled. The Commission should respect the principle of proportionality by taking into account the nature, gravity and frequency of irregularities and their financial implications for the budget of the Union. Where it is not possible for the Commission to quantify precisely the amount of irregular expenditure in order to apply financial corrections linked to individual cases, it should apply a flat-rate or extrapolated financial correction.

3. Where the Member State does not accept the conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available to form the basis for Commission conclusions on the application of the financial correction.

4. The Commission shall decide on a financial correction taking into account the extent and financial implications of the irregularities or serious deficiencies, by means of an implementing act within 9 months of the date of the hearing or of the submission of additional information as required by the Commission.

When deciding on a financial correction, the Commission shall take account of all information and observations submitted.

Where a Member State agrees to the financial correction for cases referred to in points (a) and (c) of paragraph 1 before the adoption of the decision referred to in paragraph 1, the Member State may reuse the amounts concerned. This possibility shall not apply to financial correction for cases referred to in (b) of paragraph 1.

5. The Fund-specific rules for the EMFF may lay down specific bases for financial corrections by the Commission linked to non-compliance with rules applicable under the Common Fisheries Policy.

CHAPTER IV
Decommitment

Article 99

Decommitment principles and rules

[1. The Commission shall decommit any amount in a programme which has not been used for pre-financing in accordance with Article 84 or for which a payment application has not been submitted in accordance with Articles 85 and 86 by 31 December of the second calendar year following the year of the budget commitments for the years 2021 to 2026.

2. The amount to be covered by pre-financing or payment applications by the time limit established in paragraph 1 concerning the budget commitment of 2021 shall be 60 % of that commitment. 10 % of the budget commitment of 2021 shall be added to each budget commitment for the years 2022 to 2025 for the purposes of calculating the amounts to be covered.]

3. The part of commitments still open on 31 December [2029] shall be decommitted if the assurance package and the final performance report have not been submitted to the Commission by the time limit set out in Article 38(1).

Article 100

Exceptions to the decommitment rules

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

   (a) the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or

   (b) it has not been possible to make a payment application for reasons of *force majeure* seriously affecting implementation of all or part of the programme.

   The national authorities claiming *force majeure* shall demonstrate the direct consequences of the *force majeure* on the implementation of all or part of the programme.

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

Article 101

Procedure for decommitment

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

2. The Member State shall have one month to agree to the amount to be decommitted or to submit its observations.

3. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the calendar year concerned, the reduced amount of support over one or more priorities of the programme. For programmes supported by more than one Fund, the amount of support shall be reduced by Fund proportionately to the amounts concerned by the decommitment that had not been used in the calendar year concerned.

   In the absence of such submission, the Commission shall revise the financing plan by reducing the contribution from the Funds for the calendar year concerned. That reduction shall be allocated to each priority proportionately to the amounts concerned by the decommitment that had not been used in the calendar year concerned.

4. The Commission shall amend the decision approving the programme no later than 31 October.

[TITLE VIII

FINANCIAL FRAMEWORK[48]]

[Article 102

Geographical coverage of support for the Investment for jobs and growth goal

1. The ERDF, the ESF+ and the Cohesion Fund shall support the Investment for jobs and growth goal in all regions corresponding to level 2 of the common classification of territorial units for statistics ('NUTS level 2 regions') established by Regulation (EC) No 1059/2003 as amended by Commission Regulation (EC) No 868/2014.

2. Resources from the ERDF and ESF+ for the Investment for jobs and growth goal shall be allocated among the following three categories of NUTS level 2 regions:

   (a) less developed regions, whose GDP *per capita* is less than 75 % of the average GDP of the EU-27 ('less developed regions');

   (b) transition regions, whose GDP *per capita* is between 75 % and 100% of the average GDP of the EU-27 ('transition regions');

   (c) more developed regions, whose GDP *per capita* is above 100 % of the average GDP of the EU-27 ('more developed regions').

   The classification of regions under one of the three categories of regions shall be determined on the basis of how the GDP *per capita* of each region, measured in purchasing power standards ('PPS') and calculated on the basis of Union figures for the period 2014-2016, relates to the average GDP of the EU-27 for the same reference period.

3. The Cohesion Fund shall support those Member States whose GNI *per capita*, measured in PPS and calculated on the basis of Union figures for the period 2014-2016, is less than 90 % of the average GNI *per capita* of the EU-27 for the same reference period.

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48 The Council does not yet have a mandate on all Articles part of Title VIII - Financial framework, pending agreement on the MFF.

4. The Commission shall adopt a decision by means of implementing act setting out the list of regions fulfilling the criteria of one of the three categories of regions and of Member States fulfilling the criteria of paragraph 3. That list shall be valid from 1 January 2021 to 31 December 2027.]

[Article 103

Resources for economic, social and territorial cohesion

1. The resources for economic, social and territorial cohesion available for budgetary commitment for the period 2021-2027 shall be EUR 330 624 388 630 in 2018 prices.

   For the purposes of programming and subsequent inclusion in the budget of the Union, that amount shall be indexed at 2 % per year.

2. The Commission shall adopt a decision, by means of implementing act, setting out the annual breakdown of the global resources per Member State under the Investment for jobs and growth goal, per category of regions, together with the list of eligible regions in accordance with the methodology set out in Annex XXII.

   That decision shall also set out the annual breakdown of the global resources per Member State under the European territorial cooperation goal (Interreg).

3. 0,35 % of the global resources after the deduction of the support to the CEF referred to in Article 104(4), shall be allocated to technical assistance at the initiative of the Commission.]

[Article 104

Resources for the Investment for jobs and growth goal and for the European territorial cooperation goal (Interreg)

1. Resources for the Investment for jobs and growth goal shall amount to 97.5 % of the global resources (i.e., a total of EUR 322 194 388 630) and shall be allocated as follows:

   (a) 61.6 % (i.e a total of EUR 198 621 593 157) for less developed regions;

   (b) 14.3 % (i.e a total of EUR 45 934 516 595) for transition regions;

(c) 10.8 % (i.e., a total of EUR 34 842 689 000) for more developed regions;

(d) 12.8 % (i.e., a total of EUR 41 348 556 877) for Member States supported by the Cohesion Fund;

(e) 0.4 % (i.e., a total of EUR 1 447 034 001) as additional funding for the outermost regions identified in Article 349 of the TFEU and the NUTS level 2 regions fulfilling the criteria laid down in Article 2 of Protocol No 6 to the 1994 Act of Accession.

2. In 2024, the Commission shall, in its technical adjustment for the year 2025 in accordance with Article [6] of Regulation (EU, Euratom) [[…] (*MFF Regulation*)], review the total allocations under the Investment for jobs and growth goal of each Member State for 2025 to 2027.

The Commission shall in its review apply the allocation method set out in Annex XXII on the basis of the then available most recent statistics.

Following the technical adjustment, the Commission shall amend the implementing act setting out a revised annual breakdown referred to in Article 103(2).

3. The amount of resources available for the ESF+ under the Investment for jobs and growth goal shall be EUR 88 646 194 590.

The amount of additional funding for the outermost regions referred to in point (e) in paragraph 1 allocated to the ESF+ shall be EUR 376 928 934.

4. The amount of support from the Cohesion Fund to be transferred to the CEF shall be EUR 10 000 000 000. It shall be spent for transport infrastructure projects by launching specific calls in accordance with Regulation (EU) [*number of new CEF Regulation*] exclusively in Member States eligible for funding from the Cohesion Fund.

The Commission shall adopt an implementing act, setting out the amount to be transferred from each Member State's Cohesion Fund allocation to the CEF, which amount shall be determined on a *pro rata* basis for the whole period.

The Cohesion Fund allocation of each Member State shall be reduced accordingly.

The annual appropriations corresponding to the support from the Cohesion Fund referred to in the first subparagraph shall be entered in the relevant budget lines of the CEF as of the 2021 budgetary exercise.

30% of the resources transferred to the CEF shall be available immediately after the transfer to all Member States eligible for funding from the Cohesion Fund to finance transport infrastructure projects in accordance with Regulation (EU) [*the new CEF Regulation*].

Rules applicable for the transport sector under Regulation (EU) [*new CEF Regulation*] shall apply to the specific calls referred to in the first subparagraph. Until 31 December 2023, the selection of projects eligible for financing shall respect the national allocations under the Cohesion Fund with regard to 70% of the resources transferred to the CEF.

As of 1 January 2024, resources transferred to the CEF which have not been committed to a transport infrastructure project shall be made available to all Member States eligible for funding from the Cohesion Fund to finance transport infrastructure projects in accordance with Regulation (EU) [*the new CEF Regulation*].

5. EUR 500 000 000 of the resources for the Investment for jobs and growth goal shall be allocated to the European Urban Initiative under direct or indirect management by the Commission.

6. EUR 175 000 000 of the ESF+ resources for the Investment for jobs and growth goal shall be allocated for transnational cooperation supporting innovative solutions under direct or indirect management.

7. Resources for the European territorial cooperation goal (Interreg) shall amount to 2.5 % of the global resources available for budgetary commitment from the Funds for the period 2021-2027 (i.e. a total of EUR 8 430 000 000).]

[Article 105

Transferability of resources

1. The Commission may accept a proposal by a Member State in its submission of the Partnership Agreement or in the context of the mid-term review, for a transfer:

(a) of not more than 15 % of the total allocations for less developed regions to transition regions or more developed regions and from transition regions to more developed regions;

(b) from the allocations for more developed regions or transition regions to less developed regions.

2. The total allocations to each Member State in respect of the Investment for jobs and growth goal and the European territorial cooperation goal (Interreg) shall not be transferable between those goals.]

[Article 106

Determination of co-financing rates

1. The Commission decision approving a programme shall fix the co-financing rate and the maximum amount of support from the Funds for each priority.

2. For each priority, the Commission decision shall set out whether the co-financing rate for the priority is to be applied to either of the following:

(a) total contribution, including public and private contribution;

(b) public contribution.

3. The co-financing rate for the Investment for jobs and growth goal at the level of each priority shall not be higher than:

(a) 70 % for the less developed regions ;

(b) 55 % for the transition regions;

(c) 40 % for the more developed regions.

The co-financing rates set out under point (a), shall also apply to outermost regions.

The co-financing rate for the Cohesion Fund at the level of each priority shall not be higher than 70 %.

The ESF+ Regulation may establish higher co-financing rates for priorities supporting innovative actions in accordance with Article [14] of that Regulation.

4. The co-financing rate for Interreg programmes shall be no higher than 70 %.

The ETC Regulation may establish higher co-financing rates for external cross-border cooperation programmes under the European territorial cooperation goal (Interreg).

5. Technical assistance measures implemented at the initiative of, or on behalf of, the Commission may be financed at the rate of 100 %.]

TITLE IX

DELEGATION OF POWER, IMPLEMENTING, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

Delegation of power and implementing provisions

Article 107

Delegation of powers

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

Article 108

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 73(4), Article 88(4), Article 89(4) and Article 107 shall be conferred on the Commission for an indeterminate period of time from date of entry into force of this Regulation.

3. The delegation of power referred to in Article 73(4), Article 88(4), Article 89(4) and Article 107 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 73(4), Article 88(4), Article 89(4) and 107 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 109

Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

CHAPTER II

Transitional and final provisions

Article 109a

Review

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

Article 110

Transitional provisions

1. Regulation (EC) No 1303/2013 or any other act applicable to the 2014–2020 programming period shall continue to apply only to programmes and operations supported by the ERDF, the ESF, the Cohesion Fund and the EMFF under that period.

2. Article 5 of Regulation (EU) No 1303/2013 shall apply to programmes and operations supported by the Funds under the 2021-2027 programming period as necessary for the implementation of Article 6 of this Regulation.

Article 111

Conditions for operations subject to phased implementation[49]

1. The managing authority may proceed with the selection of an operation consisting of the second phase of an operation selected for support and started under Regulation (EC) No 1303/2013, provided that the following cumulative conditions are met:

   (a) the operation, as selected for support under Regulation (EC) No 1303/2013, has two phases identifiable from a financial point of view with separate audit trails;

   (b) the total cost of the operation exceeds EUR 5 million;

   (c) expenditure included in a payment application in relation to the first phase is not included under any payment applications in relation to the second phase;

   (d) the second phase of the operation complies with applicable law and is eligible for support from the ERDF, the ESF+, the Cohesion Fund or the EMFF under the provisions of this Regulation or the Fund-specific Regulations;

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

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

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[49] *Recital 72 is amended as follows:*

(72) Since Regulation (EU) No 1303/2013 of the European Parliament and of the Council or any act applicable to the 2014–2020 programming period should continue to apply to programmes and operations supported by the Funds covered under the 2014–2020 programming period. Since the implementation period of Regulation (EU) No 1303/2013 is expected to extend over to the programming period covered by this Regulation and in order to ensure continuity of implementation of certain operations approved by that Regulation, phasing provisions should be established. Each individual phase of the phased operation, which serves the same overall objective, should be implemented in accordance with the rules of the programming period under which it receives funding, while the managing authority may proceed with selecting the second phase on the basis of the selection procedure carried out under 2014-2020 programming period for the relevant operation, provided that it satisfies itself that the conditions set out in this Regulation for phased implementation are complied with.

Article 112

Entry into force

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

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

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*