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OF AUDITORS

## Opinion No 6/2018

Opinion of the European Court of Auditors on the Commission's proposal of  
29 May 2018 on the Common Provisions Regulation, COM(2018) 375 final

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## INTRODUCTION

1. On 29 May 2018, the Commission published its proposal<sup>1</sup> for a common provisions regulation (CPR) for seven shared management EU funds for the next programme period, 2021-2027. The legal basis of the Commission's proposal means that consultation with the Court of Auditors is mandatory<sup>2</sup>. This opinion fulfils the consultation requirement.

2. The seven funds, which together could cover around €360 billion, up to a third of the total EU budget for the 2021-2027 period, are:

- the European Regional Development Fund (ERDF)
- the European Social Fund Plus (ESF+)
- the Cohesion Fund (CF)
- the European Maritime and Fisheries Fund (EMFF)
- the Asylum and Migration Fund (AMF)
- the Internal Security Fund (ISF)
- the Border Management and Visa Instrument (BMVI)

3. The Opinion begins with a summary of our analysis of the extent to which the proposal meets the three main objectives set for it by the Commission, which run through the draft CPR: to substantially reduce the administrative burden for beneficiaries and managing authorities; to increase flexibility to adjust programme objectives and resources in light of changing circumstances; and to align the programmes more closely with the EU priorities

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<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, COM(2018) 375 final

<sup>2</sup> Treaty on the Functioning of the European Union, article 322(1)(a). The ECA received letters from the European Parliament and the Council of the European Union requesting its views on 21 June 2018

and increase their effectiveness<sup>3</sup>. The draft CPR itself is very wide-ranging so our examination groups its constituent elements as follows: Cohesion policy objectives and the programming and monitoring framework (relating to Titles I, II, III, IV and VIII of the proposal); the delivery system and eligibility rules (Titles V and VII); and finally accountability arrangements, including audit by the ECA (Title VI).

4. Throughout the analysis, we include a number of issues for consideration by the Commission and the legislators. We indicate the article(s) in the draft CPR to which these issues refer, but a number of them, if that is the will of the legislators, could be addressed in the lower level supporting legislation – delegated and implementing acts – or through separate guidance. Supporting legislation receives less attention than regulations, even though it is this legislation which may give rise to unnecessary complexity and administrative burden. There are two issues for consideration which go beyond the CPR and its supporting legislation, but which we believe are significant enough to bring to the attention of the Commission and legislators (issues for consideration numbers 5 and 18). Finally, the Annex provides a list of specific drafting suggestions, cross-referenced to the relevant issue for consideration.

#### **SUMMARY ASSESSMENT AGAINST THE COMMISSION'S MAIN OBJECTIVES**

5. The CPR builds upon the framework established in the previous programme period. It sets out common policy objectives, defines the allocation of funds between all 27 Member States, and provides rules for programming and enforcement of the policy. Unlike its equivalent regulation for the 2014-2020 programme period<sup>4</sup>, the proposal has not been subject to an impact assessment. According to the explanatory memorandum, this is because the proposal 'sets common rules and delivery mechanism for other policies'<sup>5</sup>. The

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<sup>3</sup> Explanatory Memorandum, section 5, COM(2018) 375 final

<sup>4</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council, (OJ L 347, 20.12.2013, p. 320)

<sup>5</sup> Explanatory Memorandum, section 3, COM(2018) 375 final

fund-specific regulations<sup>6</sup> for the seven funds governed by the CPR have been subject to impact assessments. However, these assessments did not cover some important issues of general relevance, such as the level of flat rates in the context of simplified forms of support (paragraph 81) and the impact of the proposed enhanced proportionate arrangements (paragraphs 112-120).

6. The Commission's main objectives underpinning the proposed policy design were: simplification; flexibility of policy delivery; and strengthened alignment between funding and EU priorities<sup>7</sup>. We set out our main conclusions on each of these objectives below; in line with our role as the external auditor of the EU, we also provide our analysis of the proposed new accountability arrangements.

### *Simplification*

7. The proposal reflects clearly the Commission's efforts to address the calls for simplification of the Cohesion Policy. We fully support the Commission's ambitions to simplify, and there are many elements of the draft CPR which involve simplification. In a number of cases, however, we think that the potential benefits of simplification in terms of a reduced administrative burden and efficiency savings are outweighed by greater risks to compliance with the rules and to sound financial management.

8. For example, we welcome that the structure of the programmes is largely maintained. But we also note that some provisions in the CPR proposal lack clarity, which may lead to different interpretation of rules, affecting legal certainty. Example are the methodology for the mid-term review (paragraph 45), criteria for the assessment of key control requirements (paragraph 101) and conditions for use of the enhanced proportionality arrangements (paragraph 117).

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<sup>6</sup> COM(2018) 372 final; COM(2018) 382 final; COM(2018) 390 final; COM(2018) 472 final; COM(2018) 473 final; and COM(2018) 471 final

<sup>7</sup> Explanatory Memorandum, section 5, COM(2018) 375 final

9. The proposal offers a range of simplification measures, such as simplified cost options, and financing not linked to costs, which, if properly designed and effectively applied by the Member States, have the potential to shift focus from spending to results. However, the combination of these measures proposed may lead to reimbursement above or below the level of costs incurred and creates risks to achieving value for money.

10. The proposed removal of some current procedures, such as ex ante assessments of programmes, appraisals of major projects, strategic reporting and the performance reserve, may offer simplification but, in our view, their removal weakens the mechanisms in place to deliver results.

#### *Flexibility*

11. The draft CPR proposes a number of measures to support a more flexible EU budget, with which we are generally in favour. A new element proposed for the 2021-2027 period is to have two-stage (5+2) programming for three funds, whereby the allocations for the last two years are set in 2025 as part of a mid-term review exercise. While this may help flexibility and increase the capacity to respond to changing circumstances, we have concerns about the proposed timing of the review, and the administrative burden involved which represents a complication rather than a simplification. We also consider that some of the processes involved need further clarification.

#### *Alignment between funding and EU priorities.*

12. We welcome the steps made by the Commission to strengthen the link between the use of EU funding and the EU's high level economic governance arrangements – the European semester – such as the added emphasis on the implementation of relevant country-specific recommendations within programmes. We also support the move from ex ante conditionalities to simpler enabling conditions, and provide a number of aspects of this for the Commission to consider.

13. Elsewhere we have greater concerns. Unlike the previous two programme periods, the draft CPR for the next period is not supported by an EU-wide strategy or set of targets. Instead, the CPR proposes five high-level policy objectives which are not translated into

measurable, quantified results at the EU level. Thus the CPR fails to articulate a clear vision as to what the EU wishes to achieve through its policies. Rather, it is for the Member States to define the main strategic goals. As a result, in our view, the proposal does not align funding with EU priorities and is less performance-oriented than in the period 2014-2020.

#### *Accountability arrangements*

14. On accountability, the proposal shifts responsibility for implementation to the Member States, broadens the single audit arrangements and reduces the role of the Commission. The proposed rationalisation of management verifications by focusing them on high risk areas has the potential to reduce the administrative burden and increase the efficiency of these checks, if applied correctly. However, the proposed enhanced proportionate arrangements for control systems effectively eliminate supervision by the Commission and could expose EU funds to increased risks. This element of the proposal could jeopardise achievements in internal control developed over the last two decades. We suggest several considerations for the Commission in this area.

### **STRATEGIC ISSUES AND COHESION POLICY OBJECTIVES**

#### ***Addressing EU priorities***

##### *Pre-allocation of funds to Member States*

15. For large parts of the EU budget — particularly those where shared management operates — the maximum level of expenditure under the multiannual financial framework (MFF) headings is broken into annual allocations per Member State. While this pre-allocation of funds is based on many considerations (Articles 102-104 and annex XXII of the CPR), criteria related to performance are not among them.

16. We have noted in previous audits that it is a challenge to obtain good qualitative results from schemes where absorption of funds by Member States is an implicit objective<sup>8</sup>. In our

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<sup>8</sup> Annual Report concerning the financial year 2012, paragraph 10.4. (OJ C 331, 14.11.2013, p. 1). See also Opinion No 7/2011 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the ERDF, the ESF, the CF, the EAFRD, the EMFF

view, the allocation of funding should follow the strategic priorities (policy objectives). We note that this is not the case and that instead the priorities (Article 4 of the CPR) follow the funding.

#### *Thematic concentration requirements*

17. The draft CPR provides continuity of funding, through its policy objectives (Article 4), in that it supports the same areas prioritized in the 2014-2020 period under the framework of the Europe 2020 strategy.

18. It also continues with the thematic concentration requirements (Article 8), focusing investments on innovation, greener, low-carbon Europe (Article 3 of the proposal of ERDF/CF Regulation) and social inclusion and combatting youth unemployment (Article 7 of the proposal of ESF+ Regulation). We found in previous audits that thematic concentration requirements had a strong impact on setting adequate priorities for funding<sup>9</sup>. We thus welcome the fact that these requirements have been maintained, as they should allow EU funding to be better targeted, thus maximising the impact of these scarce resources.

19. However, we note that EU funding as a proportion of total public spending varies between the Member States, and is very low for some (see Figure 1 below). For these Member States, even with thematic concentration, the success of EU funding will depend mainly on their ability to mobilise complementary national funding.

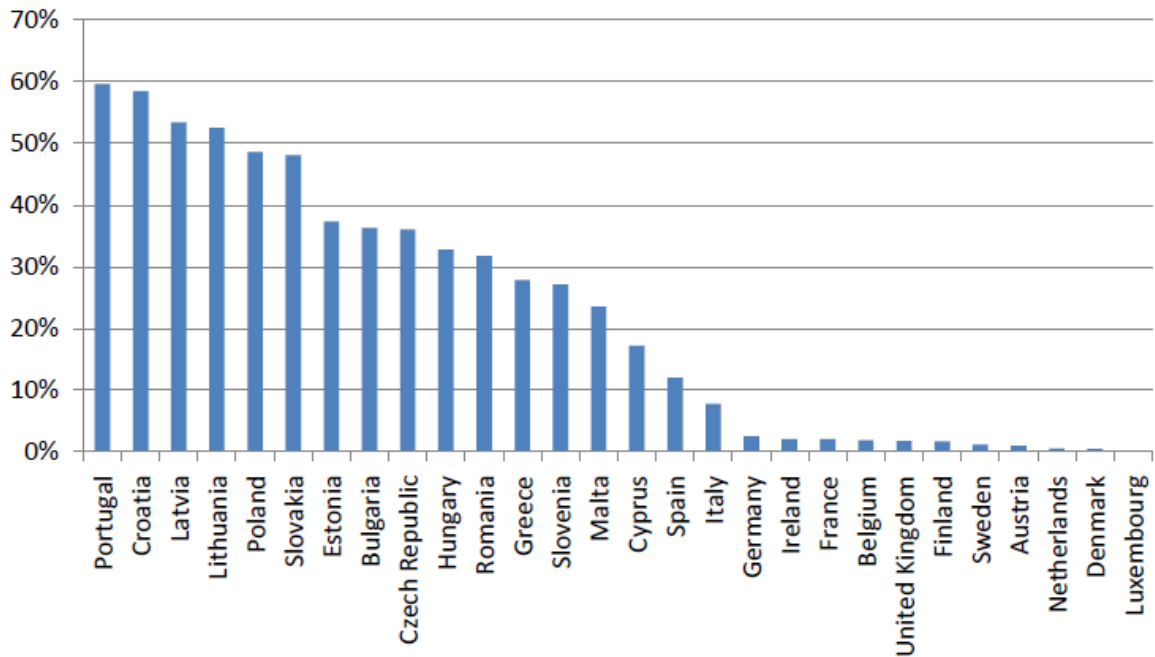
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covered by the Common Strategic Framework and laying down general provisions on the ERDF, the ESF and the CF, paragraph 4 (OJ C 47, 17.2.2012, p. 1)

<sup>9</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, paragraphs 67-80



Figure 1 - ERDF and CF as % of public investments 2015-2017



Source: Commission Staff Working Document, Impact assessment, SWD(2018)282 final

#### *EU-level strategy and objectives*

20. We have reported in the past that EU priorities need to be translated into useful operational objectives and targets for managers, to enable consistent monitoring and reporting on the contribution of the funds to the EU priorities<sup>10</sup>. In its proposal the Commission claims that the CPR objectives are better aligned with EU priorities<sup>11</sup>; the draft CPR does not, however, clearly identify what these EU priorities are. Unlike the previous two programme periods, the CPR for the post 2020 period is not underpinned by a common EU strategy or set of targets. We recognise that the next year will see European Parliament elections and a new Commission, which might make strategy development premature. However, the absence of a high level strategy to inform the CPR objective is an important omission. In our 2014 and 2015 annual reports we drew attention to the complications

<sup>10</sup> Annual Report concerning the financial year 2014, Chapter 3, (OJ C 373, 10.11.2015, p. 1)

<sup>11</sup> Explanatory Memorandum, Section 5, COM(2018) 375 final

stemming from the fact that the Europe 2020 strategy is not aligned with either MFF periods or the mandate of the Commission<sup>12</sup>.

21. Instead, reference is made to the contribution of the funds to vague objectives, such as ‘mainstream climate actions’ (preamble 9 and Article 4.3)<sup>13</sup>, and to the ‘Fund specific missions pursuant to their Article 174 Treaty based objectives’ (preamble 8 and Article 4.2).

Furthermore:

- for the three Cohesion funds and EMFF there is no explanation as to how the EU priorities set out in the Treaty<sup>14</sup> translate into the five (lower level) policy objectives of the draft CPR (Article 4);
- these five policy objectives are phrased in unspecific terms at a very high, aspirational level (Article 4)<sup>15</sup>; while the fund-specific regulations provide more details on the spending areas which could contribute to each of the policy objectives, these do not constitute a set of measurable and quantified operational objectives; and
- the policy objectives only relate to four funds; the fund specific regulations set separate policy objectives for the AMIF, the ISF and the BMVI (preamble point 8 and Article 1.3).

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<sup>12</sup> Annual Report concerning the financial year 2014, paragraph 3.8 (OJ C 373, 10.11.2015, p. 1); and Annual Report concerning the financial year 2015, paragraph 3.21, (OJ C 375, 13.10.2016, p. 1)

<sup>13</sup> We reported on the EU’s mainstreaming of climate action in different funding instruments in Special Report 31/2016, “Spending at least one euro in every five from the EU budget on climate action: ambitious work underway, but at serious risk of falling short”

<sup>14</sup> TFEU, Article 174

<sup>15</sup> ‘a smarter Europe’; ‘a greener, low-carbon Europe’; ‘a more connected Europe’; ‘a more social Europe’; ‘a Europe closer to citizens’

- Recent briefing papers have pointed to the importance of EU value added for allocating resources and designing and evaluating spending programmes<sup>16</sup>. In the absence of a definition of EU value added in the amended Financial Regulation, it is difficult for the Commission to apply this concept when putting in place the CPR framework.

22. Consequently, the draft CPR does not articulate a clear vision as to what the EU wishes to achieve with the funds it covers, presenting potential risks to the design, implementation and impact of the policy.

23. The Commission and the legislators should consider:

- (1) Proposing clear EU priorities – with associated targets – to which the funds have to contribute and, in doing so, address the points we raise in paragraph 21 (Article 4 of the draft CPR).

### ***Single rulebook***

24. The aim of the Commission’s proposal for the CPR is to provide a simple, comprehensive rulebook providing aligned implementation rules for all<sup>17</sup>. We welcome the simplified overall structure of the legislative framework, with a reduced number of considerably shorter regulations. It now comprises three layers of legislation – the CPR, fund-specific regulations and delegated acts on the basis of empowerments set out in the CPR – fewer than in the previous programme period<sup>18</sup>.

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<sup>16</sup> Briefing Paper “Future of EU finances: reforming how the EU budget operates”, paragraph 33; Briefing Paper “The Commission’s proposals for the 2021-2027 Multiannual Financial Framework”, paragraph 26

<sup>17</sup> European Commission Simplification Handbook, 2018, page 2

<sup>18</sup> Opinion No 7/2011 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions, paragraph 5, (OJ C 47, 17.2.2012, p. 1)

25. For the first time, seven shared management funds (paragraph 2 above) are covered in a single legal framework. As was the case for the 2014-2020 programme period<sup>19</sup>, the Commission claims that this has the effect of simplifying the implementation of funds and fostering synergies between them<sup>20</sup>. However, we note that the alignment of implementation rules is only partial, as within the CPR different rules continue to apply to different funds. For example

- While the financial rules apply to all seven funds, the common provisions only apply to four of these funds (Article 1.1) – CF, ERDF, ESF+ and EMFF.
- Title VIII on the financial framework does not apply to the EMFF (Article 1.4).
- The funds have different monitoring arrangements for the programmes: an annual performance report for the EMFF, the AMF, the ISF and the BMVI (Article 36(6)) and a final performance report by 15 February 2031 (Article 38) for the ERDF, CF and ESF+.

### ***Budgetary flexibility***

#### *Eligibility period*

26. We have previously drawn attention to the problems (in particular the administrative burden and its consequent effect on the start of the subsequent programming period) that arise when the eligible periods of two different programme periods overlap. We therefore welcome the proposal under Article 99 to reduce this period at the end of 2021-2027 from three years to two (in the jargon, a move from n+3 to n+2) as a first step in the right direction towards aligning eligibility as far as possible with the programme period<sup>21</sup>.

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<sup>19</sup> Annual Report concerning the financial year 2014, paragraph 3.39, (OJ C 373, 10.11.2015,p. 1)

<sup>20</sup> European Commission Simplification Handbook (2018), page 2 and Explanatory Memorandum page 7 of COM(2018) 375 final: “This simplification enables synergies and flexibility between various strands within a given objective, removing artificial distinctions between different policies contributing to the same objective”

<sup>21</sup> Special Report 36/2016 “An assessment of the arrangements for closure of the 2007-2013 cohesion and rural development programmes”, paragraphs 129-130 and Recommendation 4

*Flexibility in the ability to transfer funding between programmes*

27. The CPR proposes to remove the need for a Commission decision for financial transfers between priorities supported by the same fund, in the same programme, for the same category of region, for up to 5 % of the priority's initial allocation, with a ceiling of up to 3 % of the programme budget (Article 19.5). The draft CPR also provides for the possibility to transfer up to 5 % of allocations between all funds under shared management and other instruments (Article 21). This ability to transfer funds provides more flexibility for Member States and should help them to spend the EU funding available to them.

28. However, the main aim of budget transfers should not, in our view, be to make it easier to spend the money; any such transfers should be a response to the most pressing needs. Furthermore, such transfers are likely to lead to additional complications in making adjustments to the performance framework and other administrative processes; nor is it clear how the amount to be transferred will be calculated. The CPR proposal does not specify whether the percentages that can be transferred refer to the initial allocation, or allocation at any point in time.

*Two stage (5+2) programming*

29. A new element proposed for the 2021-2027 period is two stage programming for the ERDF, CF and ESF+, whereby the financial allocations in the programmes are defined for the first five years, 2021-2025, only (Article 17.6), with the allocations for the last two years being set in 2025 as part of the mandatory mid-term review exercise (Article 14.2(a)). This should help flexibility and increase the EU's capacity to respond to changing circumstances. However, the process of amending all programmes at the same time will add significantly to

the administrative burden for the Commission and Member States authorities in the early stages of implementing programmes<sup>22</sup>.

30. The Commission and the legislators should consider:

- (2) Clarifying the conditions for transfer of funds and ensuring the necessary focus on results (Articles 19 and 21 of the draft CPR).
- (3) Re-considering the proposed approach for the two stage programming (Article 17.6 of the draft CPR) bearing in mind the risks to the administrative burden.

***Creating a favourable environment for investments***

*Economic governance and links to the Cohesion Policy*

31. We welcome the steps made by the Commission to strengthen the link between the use of EU funding and the EU's high level economic governance arrangements – the European semester. We welcome the possibility for a review and amendments of programmes in order to support the implementation of relevant country-specific recommendations addressed to the Member States (Article 15).

32. However, in order to make a good use of these provisions, and to strengthen the link between EU funding and EU priorities, the Commission needs to ensure that the country-specific recommendation (CSRs) it proposes are relevant, can be implemented and can directly contribute to eliminating the weaknesses identified. We have recently reported on both the lack of a systematic link between the specific imbalances identified in the in-depth reviews and the CSRs addressed to Member States<sup>23</sup>; and on weaknesses in the articulation of the CSRs. In the latter report we recommended that the CSRs should clarify the rationale

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<sup>22</sup> Special Report 17/2018 “Commission’s and Member States’ actions in the last years of the 2007-2013 programmes tackled low absorption but had insufficient focus on results”, Figure 4

<sup>23</sup> Special Report 3/2018 “Audit of the Macroeconomic Imbalance Procedure (MIP)”, paragraphs 35-43

for the recommendation and related risks<sup>24</sup>. The success of the provisions related to measures linked to sound economic governance will therefore depend on whether the CSRs are formulated clearly enough to allow for unambiguous operational measures which can be monitored and where successful implementation can be established.

33. We welcome the proposal to enhance the role of the Commission by giving it the power to suspend payments directly in cases where Member States fail to take action in response to a request for a review and amendment of a programme (Article 15.6). We note, however, that this power is undermined by the fact that the draft CPR does not set out any arrangements for monitoring the implementation by Member States of measures linked to sound economic governance.

34. Where a Member State fails to take the required action or the Council adopts two successive recommendations in the same imbalance procedure, the Commission must propose to the Council the suspension of either commitments or payments (Article 15.7). In these cases, priority will be given to suspensions of commitments; suspensions of payments will be made only when immediate action is sought and in cases of significant non-compliance. We are of a view that changing the focus from suspensions of payments – as is the case in the current programme period – to suspensions of commitments, limits its penalizing impact. This impact is further weakened by the new proposal that the Commission may lift the suspension within 10 days, on the grounds of exceptional economic circumstances or following a reasoned request by the Member State. We note that the proposal does not clarify what constitutes exceptional economic circumstances or a reasoned request made by a Member State, making this sensitive provision prone to different interpretations.

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<sup>24</sup> Special Report 18/2018 “Is the main objective of the preventive arm of the Stability and Growth Pact delivered?”, paragraphs 121-125 and Recommendation 6

35. The Commission and the legislators should consider:

- (4) In line with our previous recommendation, ensuring that CSRs from 2019 onwards are clear, unambiguous and operational in order to make an appropriate use of the provisions proposed in article 15.
- (5) Including provisions on monitoring and reporting arrangements for the implementation of measures linked to sound economic governance (Article 15 of the draft CPR).
- (6) Whether suspensions should be made to payments rather than commitments, and clarifying when suspensions should be lifted (Article 15 of the draft CPR).

*Enabling conditions*

36. Ex ante conditionalities in the current period are to be replaced in the proposal by simpler enabling conditions (Article 11). We welcome several aspects of the proposed arrangements: simplification in their setup; the strengthened conditions for their effective application; and the fact that they should focus to a greater extent on the development of strategic and planning frameworks. We also welcome a need for consistency between the selected operations and the corresponding strategies and planning documents concerning the fulfilment of enabling conditions. We believe that this is an important step towards ensuring that the conditions are applied throughout the programme period.

37. However, we have also identified a number of areas where there is scope for improvement to the proposed provisions relating to enabling conditions:

- Some of the criteria proposed may not affect the efficient and effective implementation of the related specific objective, contrary to our earlier recommendation<sup>25</sup>. For example, the thematic enabling condition '*National Roma Integration Strategy in place*' (Annex IV of the draft CPR) can contribute only partially

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<sup>25</sup> Special Report 15/2017 "Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments", Recommendation 1a



to the achievement of the related specific objective that supports a wider group of marginalised communities, not just Roma.

- In a recent report, we recommended that post-2020 legislation should set clear criteria to assess the fulfilment of conditions including measurable targets wherever feasible, to ensure a common understanding of what needs to be achieved<sup>26</sup>. However, in our view, some of the criteria are ambiguous. In particular, the proposed thematic conditions relating to the development of strategies and strategic policy frameworks lack detail on how the strategies should be defined, which entities should be responsible for their implementation, what capacity is needed for their fulfilment and application and, in most cases, how they should be monitored.
- We have also recommended that legislation for post-2020 programme period should ensure consistency in the assessment of the criteria for fulfilment of conditions with the European Semester<sup>27</sup>. We note that this recommendation is not reflected in the proposal.

38. The draft CPR proposes that expenditure related to the specific objective for which the enabling condition is not fulfilled should not be included in a payment application (Article 11.6). This is a positive change compared to the 2014-2020 period. However, it is not clear whether expenditure incurred before fulfilment can be subsequently included in payment applications once the enabling condition is fulfilled. Article 67.3(c) requires that selected operations are consistent with documents needed for fulfilling enabling conditions, but there is nothing more prescriptive in the draft CPR than this.

39. In order to enforce properly the exclusion of relevant expenditure from payment applications, the Commission will need to have effective arrangements in place in cases when the conditions cease to be fulfilled. We note, however, the draft CPR does not provide

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<sup>26</sup> Special Report 15/2017 “Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments”, Recommendation 1c

<sup>27</sup> Special Report 15/2017 “Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments”, Recommendation 1b

for such arrangements, as it does not require annual reporting by Member States. The fund-specific regulations for three of the seven funds covered by the draft CPR – the AMF, ISF and BMVI – do require Member States to report annually on the fulfilment of the application of the enabling conditions, but not the fund-specific regulations for the ERDF/CF, ESF+ and the EMFF.

40. The Commission and the legislators should consider:

- (7) Redefining enabling conditions so they genuinely lead to the effective and efficient implementation of specific objectives (Annexes III and IV of the draft CPR).
- (8) Including clear criteria for assessing fulfilment of the enabling conditions, monitoring arrangements and, where applicable, measurable targets and objectives, in order to ensure common understanding of what needs to be achieved (Annexes III and IV of the draft CPR).
- (9) Including provisions that ensure assessment of fulfilment of criteria in line with related country-specific recommendations and country reports issued within the context of the European Semester process (Article 11.2 and 11.4 of the draft CPR).
- (10) Clarifying that the expenditure which is incurred prior to the fulfilment of the enabling conditions and which is not consistent with the strategies and planning documents established for the fulfilment of enabling conditions, should not be included in payment applications (Article 11.6 of the draft CPR).
- (11) Including provisions that provide for effective monitoring whether the enabling conditions continue to be fulfilled or not (Article 11 of the draft CPR).

*Administrative capacity*

41. Unlike the regulation for the current programme period, the proposal does not include a list of eligible measures for technical assistance<sup>28</sup>. This leads to the risk of overlaps and a lack

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<sup>28</sup> Article 58(1) of Regulation (EU) 1303/2013, (OJ L 347, 20.12.2013, p. 320)

of complementarity with the funding envisaged under the proposal for a regulation on establishment of a Reform Support Programme<sup>29</sup>. The draft CPR requires Member States and the Commission to ensure coordination, complementarity and coherence between the CPR funds and other EU instruments (Article 4.4). In our view, given the lack of detail around technical assistance, the risk of overlaps remains.

42. Under the CPR proposal, technical assistance may be financed through a flat rate mechanism for activities ‘necessary for the effective administration and use’ of EU funds (Articles 30 and 31); and through financing not linked to costs ‘for additional ... actions to reinforce ... capacity’ (Articles 32 and 89). In our view, the difference between these two scenarios – building or reinforcing administrative capacity – is not clear. There is thus an increased risk of over-reimbursement for technical assistance. It may not be possible, for example, for the Commission to judge whether a claim for payment in respect of financing not linked to costs as stipulated by Article 32, does not duplicate, in terms of underlying expenditure, a flat rate claim made under Article 31.

43. The Commission and the legislators should consider:

- (12) Specifying measures eligible for financing under technical assistance, so that the CPR complements the proposed regulation on the establishment of the Reform Support Programme (Articles 29-30 of the draft CPR).
- (13) Clarifying the circumstances when flat rate financing or financing not linked to costs are to be used (Article 29-32 of the draft CPR).

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<sup>29</sup> The Reform Support Programme is designed to provide financial incentives for structural reforms and technical support to strengthen Member States’ administrative capacity. The support given by the Programme is intended to be complementary to the support provided by the funds governed under the CPR. Proposal for a Regulation of the European Parliament and of the Council on the establishment of the Reform Support Programme, COM(2018) 391 final

### **Mid-term review**

44. In the 2014-2020 programme period, the Commission pointed to the performance reserve as the main instrument to incentivise Member States to focus on performance once programmes have started. We found design flaws in the performance reserve<sup>30</sup>, and have previously recommended, for the post-2020 period, turning it into a more result-oriented instrument that allocates funds to those programmes that achieve good results<sup>31</sup>.

45. In contrast, the Commission's proposal for post-2020 is to discontinue the performance reserve. Instead, the Commission proposes to take account of performance through the introduction of the mid-term review of each programme in 2025 (Article 14) linked to the re-programming of funds (paragraph 29 above) (Article 19). In theory, two years out of seven years' worth of funding – potentially up to 30 % - could be subject to performance-based reallocation, compared to the 6 % at stake in the performance reserve for 2014-2020.

However, in our view, the proposed mid-term review has several shortcomings:

- It will mostly be limited to the reported values of output indicators, and not result indicators in any form, as there will be no milestones available for the result indicators in the performance framework (Article 12).
- The mid-term review may come too early in the programme period to judge progress, particularly if programmes experience delays in implementation, as has been the case in previous programmes (for programme periods 2000-2006, 2007-2013 and 2014-2020 around only 20 % of funds were absorbed in the first four years of the programming period).

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<sup>30</sup> Annual report concerning the financial year 2014, paragraph 3.63, (OJ C 373, 10.11.2015, p. 1); Opinion No 7/2011 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions, (OJ C 47, 17.2.2012, p. 1), paragraphs 17 and 18; Annual report concerning the financial year 2013, paragraphs 10.14 to 10.16 (OJ C 398, 12.11.2014, p. 1)

<sup>31</sup> Special report 15/2017 "Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments", Recommendation 2

- The methodology to be applied for the exercise and its link to performance is unclear. In particular, the proposal does not define if initial targets are to be set based only for the 2021-2025 financial allocations or for the whole period.
- It is unclear how performance will be assessed, and what the consequences of this assessment will be. As is the case for the 2014-2020 period, there is no risk that Member States will lose funds, regardless of performance.

46. The Commission and the legislators should consider:

- (14) Ensuring that the mid-term review does not only focus on inputs and outputs but also, as far as is possible, on results (Article 14 and Annex V of the draft CPR). If it is too early for results to be assessed, milestones in the programmes would help to compensate.
- (15) Clarifying the methodology that will be used for the mid-term review; for example, what will constitute satisfactory performance, and how might this affect the financial allocation (Article 14 of the draft CPR).

## **PROGRAMMING AND MONITORING FRAMEWORK**

### ***The principle of simplification in programming***

47. We have stated previously that simple and stable rules are the first means of simplification<sup>32</sup>. In this context, we welcome the fact that many rules relating to the programming and monitoring framework have remained stable from the previous programme period. The main components of the 2014-2020 framework, such as partnership agreements, have been maintained; and the overall structure of programmes remains the same (programme template, breakdown of financial resources of the programme by specific objective, and common nomenclature for financial data). Together with the fact that

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<sup>32</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", paragraph 50

templates for the programming documents are available, this should mean that authorities are familiar with the rules, making it easier for them to prepare the necessary documents.

48. We have highlighted in previous audits that the Commission and Member States share responsibility for simplifying the delivery of Cohesion policy, and that a significant share of the administrative burden on beneficiaries is caused by Member States' organisational structures and administrative inefficiencies<sup>33</sup>. It is therefore important that Member States identify the origin of administrative burdens and possible measures to reduce them; in due course they should also report progress in reducing the administrative costs and burden<sup>34</sup>. The proposal requires programmes to set out challenges in administrative capacity and governance (Article 17.3(a)(iv)), and monitoring committees will have to examine progress in administrative capacity building (Article 35.1(i)), but it is not clear whether these requirements include simplification measures and the reduction of the administrative burden.

49. The Commission and the legislators should consider:

- (16) Requiring in the partnership agreements (Article 8 and Annex II of the draft CPR) or programmes (Article 17 and Annex V of the draft CPR) a description of Member States' measures to address the administrative burden, together with indicators to measure the progress against this goal, and requiring Member States to report on this.

***The balance between simplification, results and accountability***

50. As we have pointed out previously, we believe that simplification should not come at the expense of public accountability and performance<sup>35</sup>.

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<sup>33</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy" paragraphs 60-72

<sup>34</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", paragraph 24

<sup>35</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", paragraph 14

### *Partnership agreements*

51. We welcome the fact that the CPR proposes to maintain partnership agreements as a strategic document (Article 7), as these form the basis for negotiations between the Commission and the Member States (preamble (15)). In our special report on partnership agreements, we concluded that they had been instrumental in focusing Cohesion spending on the Europe 2020 Strategy<sup>36</sup>.

52. Unlike for the 2014-2020 period, there is no fixed deadline for the submission of the partnership agreement by the Member States, meaning that requirement for programmes to be submitted within a further three months (Article 16) is of limited use. We have stressed previously the importance of starting to implement programmes as near as possible to the start of the programme period, to avoid the risk that large amounts of funds have to be spent at the end of the programme period, with a consequent risk to the focus on results<sup>37</sup>.

53. We also welcome the inclusion of a model partnership agreement in the draft CPR (annex II). We found previously that the absence of a common model in the programme period 2014-2020 affected the quality of the performance information provided<sup>38</sup>. The model for partnership agreements should also facilitate their negotiation between the Commission and Member States.

54. The CPR proposes to simplify partnership agreements by limiting the type of information that it should contain (Article 8 and annex II). However, there is a risk that the proposed

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<sup>36</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, paragraph 143

<sup>37</sup> Special Report 17/2018 “Commission’s and Member States’ actions in the last years of the 2007-2013 programmes tackled low absorption but had insufficient focus on results”, paragraph 82 and Recommendation 1

<sup>38</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, paragraph 60

arrangements result in the partnership agreement becoming a one-off exercise of limited value:

- We have previously acknowledged the role played by partnership agreements in obtaining good results by setting out a clear intervention logic<sup>39</sup> - by identifying needs before analysing how and on what the EU funds might be spent. This is not the case in the proposal. The proposed partnership agreement focuses on policy choices (Article 8), but it does not require a clear articulation of the needs to be addressed by the policy. In addition, while there is a requirement for Member States to include in their partnership agreements the main results expected (Article 8), these do not have to be quantified and are not designed to translate high level political aims or policy objectives into operational objectives. It will therefore be difficult to judge whether the proposed objectives and results are realistic, and hence whether the proposed actions to address the problems are appropriate.
- Unlike in the current programme period, the draft CPR does not provide for any monitoring of, or reporting on, the results set out in the partnership agreements. We consider that regular reporting and transparency about the results of EU interventions is key to ensuring public accountability and winning the trust of citizens<sup>40</sup>.

### *Programmes*

55. A more robust intervention logic was one of the key improvements in the 2014-2020 period regarding performance<sup>41</sup>. In addition, unlike in the 2014-2020 programme period, there is no obligation to conduct an ex ante evaluation of the intervention logic set out in

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<sup>39</sup> Annual Report concerning the financial year 2014, paragraph 3.57, (OJ C 373, 10.11.2015, p. 1)

<sup>40</sup> Landscape Review "Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements", 2014, paragraph 14

<sup>41</sup> Special Report 2/2017 "The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion", paragraphs 5 and 83



the programmes. The Financial Regulation requires that the programmes and activities which entail significant spending are subject to ex ante evaluations<sup>42</sup>. In our Opinion on the draft Financial Regulation we highlighted the importance of ex ante evaluations by recommending that the new provisions should not reduce the criteria to be covered by them<sup>43</sup>.

56. The Commission and the legislators should consider:

- (17) Proposing a timetable for the adoption of the CPR, fund-specific regulations and delegated and implementing acts to the Council and the European Parliament, with a view to ensuring that programme implementation starts on time at the start of the programme period.
- (18) Setting a mandatory deadline for the submission of partnership agreements, with a view to ensuring the timely submission of programmes (Article 7 of the draft CPR).
- (19) Including in the partnership agreement (Article 8 and Annex II of the draft CPR) an analysis of needs with respect to each policy objective as well a section where Member States have to identify the quantified results they wish to achieve, and how these align with the EU priorities.
- (20) Requiring the Member States to monitor and report on these results, at least prior to the evaluations by the Commission in 2024 and in 2031 (Article 8 of the draft CPR).
- (21) Introducing a mandatory ex-ante evaluation of programmes and requiring Member States to set out in their programmes a strategy for the programme's contribution towards the expected results established in the partnership agreement (Article 16 of the draft CPR), in line with the requirements of the Financial Regulation.

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<sup>42</sup> Article 34 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, (OJ L 193, 30.7.2018, p. 1).

<sup>43</sup> Opinion No 1/2017 concerning the proposal for a revision of the “Financial Regulation”, paragraph 89, (OJ C 91, 23.3.2017, p. 1).

### ***The performance framework***

57. The CPR proposes to introduce a performance framework to allow monitoring, reporting and evaluating programme performance during its implementation (Article 12). For each programme, the framework should consist of output and result indicators linked to specific objectives set in the fund-specific regulations<sup>44</sup>. We consider that this requirement constitutes an important step towards increasing the focus on performance as it should generate more frequent and coherent performance information.

#### *Common definition of output and result indicators*

58. We have previously established that the Commission applied different definitions for output and result, and recommended including standard definitions in the Financial Regulation<sup>45</sup>. While we welcome the proposed definition of output and result indicators (Article 2), we note that the definition of result indicator refers to the ‘short term effects’ of interventions. However, this is not entirely in line with the definitions in either the Commission’s own ‘Better regulation guidelines’<sup>46</sup> nor in the revised Financial Regulation<sup>47</sup> which refer respectively to the ‘immediate effects’ and ‘effects’ of interventions. Furthermore, the definition of result indicator in the draft CPR is not consistent with the definitions used in all fund-specific regulations: the draft ESF+ regulation does not refer to ‘result indicators’ but distinguishes between ‘immediate result indicators’ and ‘longer term result indicators’<sup>48</sup>.

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<sup>44</sup> Except for technical assistance and the specific objective addressing material deprivation (Article 12 (2), COM(2018) 375 final)

<sup>45</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, Recommendation 3

<sup>46</sup> Commission staff working document, SWD(2017) 350 of 7 July 2017, page 49

<sup>47</sup> Article 2(56) of Regulation (EU, Euratom) 2018/1046, (OJ L 193, 30.7.2018, p. 1)

<sup>48</sup> Article 2(1)(5) and 2(1)(6) of the draft ESF+ regulation. “common immediate result indicators” means common result indicators which capture effects within four weeks as from the day the participant leaves the operation (exit date); “common longer term result indicators” means

*Common and programme-specific output and result indicators for programmes*

59. We welcome the introduction of a set of common output and result indicators for each fund. This is in line with our previous reports that the use of common indicators represents potentially an important step towards enhancing the focus on performance.<sup>49</sup> The use of common indicators also facilitates the aggregation of performance data and thus comparisons of performance at programme, Member State and EU level. We note that the Commission will use the common indicators as a basis for reporting ‘core’ indicators to the European Parliament and the Council (Annex II of the ERDF/CF draft regulation).

60. The Commission and the legislators should consider:

- (22) Aligning the proposed definition of result indicators in the CPR (Article 2) and fund-specific regulations (ESF+ Regulation, Article 2 and Annexes; ERDF/CF Regulation, Annex I).

**Monitoring and use of performance information**

61. In our previous work, we underlined the importance for the Member States and Commission of demonstrating results by improving objectives, indicators, information, evaluation and incentives, thereby obtaining sufficient evidence to support EU spending decisions<sup>50</sup>. Performance information should be capable of aggregation, reliable and limited to what is strictly needed.

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common result indicators which capture effects six months after a participant has left the operation

<sup>49</sup> Annual Report concerning the financial year 2014, paragraph 3.50, (OJ C 373, 10.11.2015, p. 1).

<sup>50</sup> Landscape Review “Gaps, overlaps and challenges: a landscape review of EU accountability and public audit arrangements” page 13 and Briefing Paper “Future of EU finances: reforming how the EU budget operates”, paragraph 6, 2018

### *Aggregation of performance data*

62. We have previously reported that not all common indicators were consistently used for the programmes supported by the ERDF and this hampered a meaningful aggregation of data at EU level<sup>51</sup>. We consider that some of the proposed CPR elements do not safeguard a consistent use of performance indicators, which might put at risk a meaningful aggregation of data and thus the quality of reporting. This is reflected in the following examples:

- The CPR abolishes the general ex ante conditionality applicable in the 2014-2020 period on the existence of a system ensuring timely collection and aggregation of statistical data.
- The relevance of the proposed common indicators to the policy objective is not always evident. This is particularly the case for the Policy Objective 5, Europe Closer to citizens, where the proposed indicators are generic.
- It is, for the ERDF/CF/ESF+/EMFF programmes, unclear which common indicators Member States will need to use per specific objective. For all these funds, it is also unclear if Member States are required to gather and report data on all common indicators. We reported previously that not all common indicators were consistently used for the programmes supported by the ERDF in the period 2014-2020 and this hampered a meaningful aggregation of data at EU level<sup>52</sup>.
- Except for the Cohesion programmes (ERDF/CF, ESF+), the draft fund-specific regulations do not distinguish between output and result indicators. Member States may therefore not use result indicators consistently.

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<sup>51</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, paragraphs 103 and 150

<sup>52</sup> Special Report 2/2017 “The Commission’s negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion”, paragraphs 103, 150

- The system of financial categories of intervention proposed for the 2021-2027 programme period establishes a direct link between financial allocation and specific objectives of the programmes (Annex V). This is an improvement in relation to the provisions of the 2014-2020 period<sup>53</sup>. However, the intervention fields (Annex I) that should be used to breakdown the financial data by the Member States are numerous, ambiguous and not linked to the outputs and results.

63. The Commission and the legislators should consider:

- (23) Assessing whether the proposed common indicators for ERDF/CF (draft ERDF/CF Regulation, Annex I) fulfil the quality criteria ('RACER') set out in the Financial Regulation and making necessary adjustments<sup>54</sup>.
- (24) Clarifying whether the common indicators for ERDF/CF and ESF+ are mandatory for use by the Member States (draft ESF+ Regulation, Articles 2, 15 and Annexes; draft ERDF/CF Regulation, Article 7 and Annex I).
- (25) Streamlining and clarifying the nomenclature of financial data under Annex I of the draft CPR.

*Quality of performance data*

64. For performance data to be useful, it is essential that it is of acceptable quality. The draft CPR provisions are not sufficiently clear about who is responsible for safeguarding the quality of the data.

- The draft CPR proposes that the Monitoring Committee will oversee programme implementation (Article 33). Whilst there is a requirement for the Monitoring Committee to examine and approve annual and financial implementation

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<sup>53</sup> Special Report 2/2017 "The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion", paragraphs 92 to 99

<sup>54</sup> Article 33(3) of Regulation (EU, Euratom) 2018/1046, (OJ L 193, 30.7.2018, p. 1): "(...) relevant, accepted, credible, easy and robust indicators shall be defined where relevant"

reports submitted to the Commission, this is not the case for the performance data.

- There are no provisions on the Commission's role in verifying the quality of the transmitted data.

65. The Commission and the legislators should consider:

- (26) Clarifying the arrangements for guaranteeing the quality of the data transmitted by programme authorities, in particular the role of the Commission and the monitoring committee (Article 37 of the draft CPR).

*Use of the performance data generated at EU level*

66. We have proposed strengthening the EU's performance framework by reducing the overall number of performance objectives and indicators<sup>55</sup>. We consider that some provisions of the CPR risk adding complexity without a commensurate benefit for assessing the achievement of the EU priorities.

- We have previously recommended that Member States discontinue the use of unnecessary specific indicators<sup>56</sup>. We note that the CPR still includes the possibility to define programme specific indicators for the programmes<sup>57</sup>.
- The draft CPR obliges Member States to transmit information on the financial and performance implementation of each programme every two months via an electronic system (Article 37), a significant increase over the reporting

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<sup>55</sup> Briefing Paper "Future of EU finances: reforming how the EU budget operates", paragraph 38, 2018

<sup>56</sup> Special Report 2/2017 "The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion", paragraph 147 and Recommendation 4

<sup>57</sup> Annex I of the draft proposals for a regulation on the ERDF/CF, COM/2018/372 final; ESF+, COM/2018/382 final; and EMFF, COM/2018/390 final. Annexes VIII of the draft proposals for a regulation on the AMF, COM/2018/471 final; ISF COM/2018/472 final; and BMVI COM/2018/473 final

requirements in the 2014-2020 period. However, the performance review meetings between the Commission and Member States, and monitoring committee meetings, will only take place once or twice a year.

67. We consider that it is also unclear what use will be made by the Commission of some of the performance information generated:

- There is no requirement for Member States to report on the implementation of partnership agreements and no obligation to provide annual implementation reports<sup>58</sup>. The draft CPR introduces instead annual performance review meetings between the Commission and the Member States during which performance of the programmes will be examined (Article 36)<sup>59</sup>. While we welcome the proposal to intensify dialogue between the Commission and Member States, the proposed provisions are unclear as regards the participants, the content and the consequences of these meetings.
- The evaluations to be carried out by the Member States or the Commission (Articles 39 and 40) are not required to examine ‘economy’ – the concept that resources are made available in due time, in appropriate quantity and quality, and at the best price. We have previously highlighted the importance of including ‘economy’ in evaluations in our Opinion on the draft Financial Regulation<sup>60</sup>.

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<sup>58</sup> Instead, the key information on programme implementation shall now be reported by Member States by means of an annual performance report to the Commission for the programmes covered by the EMFF, AMF, ISF and BMVI (Article 36(6) of COM(2018) 375 final) and in a final performance report for ERDF, ESF+ and CF by 15 February 2031 (Article 38 of COM(2018) 375 final).

<sup>59</sup> For programmes supported by the AMIF, the ISF and the BMVI, the review meeting shall be organised at least twice during the programming period

<sup>60</sup> Opinion 1/2017 concerning the proposal for a revision of the “Financial Regulation”, paragraph 89, (OJ C 91, 23.3.2017, p. 1)

68. The Commission and the legislators should consider:

- (27) Restricting the use of programme specific output and result indicators with a view to reducing the administrative burden (Article 7 of the draft ERDF/CF Regulation, Article 15 of the draft ESF+ Regulation).
- (28) Reducing the frequency of transmission of data (Article 37 of the draft CPR) taking into account the subsequent use of data by the Commission and the associated administrative burden.
- (29) For the annual performance review meetings, clarifying requirements on participants, content and consequences (Article 36 of the draft CPR).
- (30) Requiring that evaluations cover economy (Articles 39 and 40 of the draft CPR).

**DELIVERY SYSTEM AND ELIGIBILITY RULES**

***Financial instruments***

*Selection of bodies implementing a financial instrument*

69. Legislation for the 2014-2020 period states that financial intermediaries must be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest. It also provides requirements for entrusting the implementation of financial instruments to bodies that have appropriate capacity to implement them<sup>61</sup>. However, the draft CPR does not include such requirements, stipulating only that the managing authority 'should select the body implementing a financial instrument' (Article 53.2).

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<sup>61</sup> Article 38 of Regulation (EU) 1303/2013, (OJ L 347, 20.12.2013, p. 320) and Article 7 of Commission Delegated Regulation (EU) No 480/2014, (OJ L 138, 13.5.2014, p. 5)



### *Ex-ante assessment for financial instruments*

70. In a change from the 2014-2020 programming period, the draft CPR (Article 52.3) no longer requires a financial instrument's ex ante assessment to be based on market gap analysis, such as evidence of a market failure or 'suboptimal investment situations'. The absence of such analysis leads to the risks that financial instruments are larger than they need to be<sup>62</sup>; and private and public financing might be crowded out. Article 52.2 requires that financial instruments should provide support for projects which 'do not find sufficient funding from market sources' but, based on our experience of auditing financial instruments, this is not equivalent to a market gap analysis and therefore not sufficient to mitigate the risks we have identified.

### *Reporting on financial instruments*

71. We welcome that the CPR proposal requires Member States to disclose in the payment application (Annex XIX) both the advance payment and disbursement of funds to final recipients (Article 86.2). This information should be sufficient for auditors to assess the legality and regularity of expenditure (see also paragraph 109). However, the provision in the 2014-2020 legislation requiring reporting on individual financial instruments<sup>63</sup> has been dropped. Under the CPR proposal, managing authorities are required to provide data on financial instruments at the programme level only (Article 37.3 and Annexes XIX and XX). But since data relating to an individual financial instrument might be scattered across several programmes, it would not be possible to assess its performance, including, for example, the level of management fees. The reason for introducing separate reporting in the previous period is still relevant: 'to enhance the transparency of the implementation process and

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<sup>62</sup> Special Report 19/2016 "Implementing the EU budget through financial instruments — lessons to be learnt from the 2007-2013 programme period", paragraphs 47-52

<sup>63</sup> Article 46 of Regulation (EU) 1303/2013

ensure appropriate monitoring, of the implementation of financial instruments'<sup>64</sup>. This also implies the need to reduce the gap between the report and the period that it covers<sup>65</sup>.

*Accountability arrangements for financial instruments*

72. The draft CPR proposal specifies that, for financial instruments, neither the managing authority nor the audit authority will carry out audits at the level of the EIB or other international financial institutions in which a Member State is a shareholder. Instead, the EIB or other financial institution will 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 (Article 75). In doing so, the draft proposal does not set out the access rights available to the ECA in relation to financial instruments implemented by the EIB or other international financial institutions. This is an important omission<sup>66</sup>. Furthermore, the draft CPR lacks operational provisions on how the results of such external audits will be reflected in the audit authorities' calculation of error rates.

73. Under the CPR proposal, no management verifications or audit authority audits can be carried out at the level of final recipients (Article 75). Under the CPR for 2014-2020, final recipients can be audited when there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided<sup>67</sup>. We acknowledge that in general it may not be necessary to visit final recipients as part of a financial instruments

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<sup>64</sup> Page 1-4 of Regulation (EU) No 1310/2011 of the European Parliament and of the Council (OJ L 337, 20.12.2011, p. 1)

<sup>65</sup> Annual Report concerning the financial year 2017, paragraph 2.35

<sup>66</sup> Opinion No 1/2017 concerning the proposal for a revision of the "Financial Regulation", paragraph 40: "audit or verification agreements shall not restrict our access to information necessary for the audit of Union funds", (OJ C 91, 23.3.2017, p. 1)

<sup>67</sup> Article 40.3 of Regulation (EU) 1303/2013

audit. However, we believe that it should be possible to extend examination to the level of final recipients in order to verify if the eligibility conditions are met<sup>68</sup>.

*Leverage effect for financial instruments*

74. One of the key advantages of financial instruments is their potential to leverage in addition private and public funds. We have previously recommended that the Commission provide a definition for the leverage of financial instruments, which clearly distinguishes between the leverage of private and national public contributions under the OP and/or of additional private or public capital contributions, and takes into account the type of instrument involved<sup>69</sup>. While the proposal provides a definition of the leverage effect (Article 2.22), this definition does not make the distinctions we recommended<sup>70</sup>.

75. The Commission and the legislators should consider:

- (31) Introducing the requirement for selection of financial intermediaries through an open, transparent and non-discriminatory procedure and providing further clarification on the types of bodies that can be entrusted with the implementation of financial instruments and the requirements they have to fulfil (Article 52 of the draft CPR).
- (32) Requiring market gap analysis at the level of the financial instruments as a part of ex ante assessment (Article 52.3 of the draft CPR).
- (33) Keeping the 2014-2020 reporting system and improving its timeliness, as this facilitates reporting at the level of a financial instrument and allows for the assessment of its performance (Article 53 of the draft CPR).

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<sup>68</sup> Annual Report concerning the financial year 2017, Chapter 6, Paragraph 6.62

<sup>69</sup> Special Report 19/2016 paragraph 152 and recommendation 3

<sup>70</sup> Special Report 19/2016 “Implementing the EU budget through financial instruments – lessons to be learnt from the 2007-2013 programme period”, Executive summary VIII

- (34) Specifying that, in the context of audit or verification agreements within the EIB and external auditors, the ECA must have access to all information it considers necessary for the audit of EU funds (Article 75.4 of the draft CPR).
- (35) Clarifying in the delegated act referred to under Article 73 operational aspects on how the audit results of the EIB and other international financial institutions (Article 75.4 of the draft CPR) should feed into the calculation of error rates and audit opinion of the audit authorities.
- (36) Providing in the CPR the possibility to carry out audits at the level of final recipients in order to verify whether the eligibility conditions are met (Article 75.4 of the draft CPR).
- (37) Clarifying the multiplier/leverage effect of financial instruments so that the performance of an instrument can be assessed in terms of national public contribution (Article 2 of the draft CPR).

### ***Simplified delivery modes***

#### *Financing not linked to costs as a form of support for programmes*

76. Our audits have shown that the payments based on entitlements linked to meeting certain conditions are less prone to compliance errors than payments based on the reimbursement of eligible costs; they also help to reduce the administrative burden. We have recommended that payments based on fulfilment of conditions or on achievement of results should become the preferred option across the budget<sup>71</sup>. The Commission's proposal includes the possibility to make payments on this basis (Article 46). A similar form of financing already exists in the 2014-2020 programme period (the 'Joint Action Plans'<sup>72</sup>), but

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<sup>71</sup> Opinion No 1/2017 concerning the proposal for a revision of the "Financial Regulation", paragraph 84, (OJ C 91, 23.3.2017, p. 1)

<sup>72</sup> Article 104 of Regulation 1303/2013 (the CPR)

no operational programmes had made use of this possibility by May 2018<sup>73</sup>. This suggests difficulties on the part of Member States in putting this aim into practice.

77. Against this background, we consider that the proposal, in itself, does not go far enough in helping the Member States to take advantage of this form of simplification. The ultimate success of this proposal will largely depend on whether the Commission and the Member States can avoid the tendency to revert to payment for inputs and outputs, as we found was the case for the performance reserve in the 2014-2020 period<sup>74</sup>.

#### *Simplified forms of grants to beneficiaries*

78. We note that the methodology underpinning use of simplified forms of grants to beneficiaries will be set out in the programmes and subject to subsequent Commission approval (Article 88 and Annex V). This should provide welcome legal certainty for the Member States.

79. As regards simplified forms of grants to beneficiaries, we support the Commission's efforts to extend the application of simplified cost options (SCOs)<sup>75</sup>. We found that SCOs were the measure most effective in reducing the administrative burden on beneficiaries in the 2014-2020 programme; and from 2012 to 2016 we did not report any quantified error relating to the use of SCOs<sup>76</sup>. However, we also stressed that Commission and Member States need to ensure that the opportunity to simplify is accompanied by a greater focus on

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<sup>73</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", May 2018, paragraph 79

<sup>74</sup> Special Report 15/2017 "Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments", paragraph 106

<sup>75</sup> Annual report concerning the financial year 2011, Chapter 6, paragraph 30 (OJ C 344, 12.11.2012, p. 1); Annual Report concerning the financial year 2012, Chapter 6, paragraph 42 (OJ C 331, 14.11.2013, p. 1); Annual Report concerning the financial year 2014, Chapter 6, paragraph 79 (OJ C 373, 10.11.2015, p 1)

<sup>76</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", May 2018, paragraph 75; Annual Report concerning the financial year 2016 paragraph 6.12, (OJ C 322, 28.9.2017, p. 1)

performance<sup>77</sup>. In the area of rural development we established that the introduction of SCOs in 2014-2020 period helped to shift focus from inputs to outputs but did not lead to greater focus on results<sup>78</sup>.

80. In this respect, we note that the fixed flat rates proposed in the draft CPR – for direct staff costs (Article 50.1) and other eligible costs (Article 51) – are linked to inputs and not to outputs or results. Thus, while the use of flat rates in this way may make it easier for Member States to apply for and receive EU funding, there is no accompanying impact on performance. This is contrary to the exhortation in the Financial Regulation that flat rates should be determined ‘where possible and appropriate ... in such a way as to allow their payment upon achievement of concrete outputs and/or results’<sup>79</sup>.

81. Furthermore, in the absence of an impact assessment (paragraph 5), there is no evidence justifying the level of the proposed fixed flat rates, for direct staff costs, other eligible costs or indirect costs. In practice, the levels in operation for the 2014-2020 in the ESF have been extended in the proposal to the other funds. However, cohesion policy covers a very wide range of sectors and projects, involving very different internal cost structures. The blanket application of the same level of flat rates means that high cost projects will give Member States the opportunity to claim high levels of flat rate costs, with no assurance that these costs are pitched at the right level.

82. The extension of the flat rate regime to include direct staff costs may introduce more complications than simplification. In our view the CPR proposal (article 50.2) already simplifies significantly the calculation and the allocation of staff costs. However, under the proposal beneficiaries could legally claim flat rates in relation to direct staff costs for a project that does not involve such costs (such as in a project entirely implemented through a public procurement process). And since flat rates may be claimed for both direct staff costs

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<sup>77</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraph IV

<sup>78</sup> Special Report 11/2018 “New options for financing rural development projects: Simpler but not focused on results”, paragraph 81, Recommendation 4

<sup>79</sup> Article 181.2 of Regulation (EU, Euratom) 2018/1046

and other direct costs, a body responsible for several projects could alternate the ways in which it determines eligible expenditure, using flat rate staff costs for some, and other direct costs for others. This gives rise to the possibility that it could claim for the same cost more than once. Article 51.3 of the proposal stipulates that Member States should not do this but, given the limited supporting documentation that will accompany such claims, we question whether the managing authorities and audit authorities, as well as the Commission, will be able to identify breaches.

83. The restrictions related to the use of simplified forms of support in operations exclusively implemented through public procurement that were in place in the previous programme period<sup>80</sup> have not been replicated in the proposal. Under the proposal, if such projects use simplified forms of support, the Commission and Member States will be required only to verify that the conditions for payment have been fulfilled<sup>81</sup>. Public procurement rules will continue to apply but will not be checked as part of the process of claiming EU support, as compliance will no longer be a condition for payment. Public procurement rules are a cornerstone of the EU's internal market but the CPR proposal significantly increases the risk that infringements of these rules remain undetected.

84. The Commission and the legislators should consider:

- (38) Providing, prior to programming, delegated acts, as referred to in Articles 88 and 89 of the draft CPR, on: support not linked to costs, with off-the-shelf solutions designed to facilitate the take-up of this form of support; and simplified forms of support to beneficiaries. One aim should be to ensure a stronger focus on results.
- (39) Re-assessing whether the fixed flat rates set out in the draft CPR are appropriate in terms of funding area, type of projects and/or project size (Articles 49, 50.1, and 51 of the draft CPR).

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<sup>80</sup> Article 67.4 of Regulation (EU) 1303/2013

<sup>81</sup> Article 88.3 of the COM(2018) 375 final

(40) Excluding direct staff costs from the flat rate simplified cost option (Article 50.1 of the draft CPR).

(41) Requiring audit authorities to cover compliance with public procurement rules in their systems audits (Article 88.3 of the draft CPR).

### ***Selection of projects and eligibility rules***

#### *Selection of projects*

85. Several of our audits identified weaknesses in project selection, leading to recommendations on strengthening criteria and a stronger role for the Commission<sup>82</sup>. Our recent audit focusing on project selection found that while selection criteria generally support programme objectives, they do not take sufficient account of results and are mostly focused on outputs and absorption<sup>83</sup>. Against this background, we welcome the introduction of requirements concerning project selection (Article 67.3), but consider that further details would be helpful.

86. Our recent briefing paper pointed to the potential administrative burden for beneficiaries that arises when national rules and regulatory obligations go beyond those set at EU level ('gold-plating'). We identified this as one of the key areas for effective simplification in Cohesion policy<sup>84</sup>. While the primary responsibility for streamlining the selection process is with the Member States, we consider that the Commission could provide more support by analysing national procedures and identifying good practices. We therefore

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<sup>82</sup> Special Report 20/2014 "Has ERDF support to SMEs in the area of e commerce been effective"; Special Report 7/2014 "Has the ERDF successfully supported the development of business incubators"; Special Report 6/2014 "Cohesion policy funds support to renewable energy generation — has it achieved good results"

<sup>83</sup> Special Report 21/2018 "Selection and monitoring for ERDF and ESF projects in the 2014–2020 period are still mainly outputs-oriented", paragraphs 23-24

<sup>84</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", May 2018, paragraphs 60-69



welcome the scope for the Commission to be involved, on its request, in the development of quality selection criteria (Article 67.2).

### *Eligibility rules and VAT*

87. The infringement of eligibility rules is one of the main sources of errors in the area of cohesion<sup>85</sup>. In response to our previous recommendations, the Commission agreed to conduct a focused analysis of national eligibility rules, focusing on Member States' responsibility for simplifying them. By April 2018, the Commission had not performed such an analysis<sup>86</sup>. Since it is not clear whether the template for programmes in the current proposal requires Member States to set out actions to simplify the rules and reduce the administrative burden on beneficiaries (see paragraph 48), the risk remains that the national eligibility rules remain unnecessarily complex.

88. Under the CPR proposal, for projects whose total costs are under €5 million, VAT is an eligible cost irrespective of whether it is recoverable or not (Article 58). In the current programme period, there is no threshold above which VAT is not eligible, but eligibility is restricted to non-recoverable VAT. In our view, where VAT is incurred by government bodies it does not represent a net cost to the Member State as it constitutes income. The imposition of a threshold for project size in the proposal limits the amount of VAT that can be reimbursed, but it only partially addresses our recommendation that VAT paid by public bodies should not be eligible for reimbursement from EU funds<sup>87</sup>. Similarly, recoverable VAT is not a genuine cost for private bodies and should not be eligible for reimbursement.

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<sup>85</sup> Annual report concerning the financial year 2017, box 6.4; Annual report concerning the financial year 2016, box 6.2, (OJ C 322, 28.9.2017, p. 1); Annual report concerning the financial year 2015, Figure 6.2, (OJ C 375, 13.10.2016, p. 1); Annual report concerning the financial year 2014, Graph 6.2, (OJ C 373, 10.11.2015, p. 1)

<sup>86</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", May 2018, paragraph 62

<sup>87</sup> Annual report concerning the financial year 2017, chapter 6, recommendation 2

89. We have a number of other concerns regarding the CPR proposals for the treatment of VAT. These concerns apply irrespective of whether the beneficiary is a public or a private organisation:

- The draft CPR does not address the point that, as we have demonstrated previously, under the current rules for reimbursing VAT, the funding received by beneficiaries could exceed the costs they incur<sup>88</sup>.
- The proposal could encourage authorities to split projects artificially so that they fall below the €5 million threshold. We are not aware of any reason why this artificial threshold has been set at this level.
- The proposal is not consistent with the rules applicable under direct management, where all VAT that is recoverable continues to be ineligible<sup>89</sup>. We have stated that differences between rules is one of the elements adding to complexity for beneficiaries and limiting synergies between funds<sup>90</sup>.

VAT is a complicated topic and we are currently examining the issue further.

90. The Commission and the legislators should consider:

- (42) Including provisions clearly defining type of analysis that managing authorities need to carry out to ensure that selected operations meet a minimum level of merit and satisfy the requirements of Article 67.3(c) of the draft CPR.

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<sup>88</sup> Annual Report concerning the financial year 2017, paragraphs 6.40 to 6.42; ECA (2016): Annual report concerning the financial year 2015, paragraphs 6.31 to 6.35, (OJ C 375, 13.10.2016, p. 1)

<sup>89</sup> Article 186(4)(c) of Regulation (EU, Euratom) 2018/1046 (i.e. the Financial Regulation). These provisions are, for example article 186(4)(c) applicable, e.g. to . InvestEU, Horizon Europe, Interregional Innovative Investments, Technical Assistance at the initiative of the Commission

<sup>90</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraph 52. As a specific example, there is the risk that the proposal will give rise to an additional administrative burden for projects subject to state aid rules, where the authorities will have to consider the eligible VAT when determining the aid intensity and monitor it subsequently

(43) Introducing in the CPR or in a delegated act the main criteria under which the Commission should be consulted on selection criteria (Article 67.2 of the draft CPR).

(44) In line with 2017 Annual Report<sup>91</sup>, excluding reimbursement of VAT to public bodies from EU funds, (Article 58.1(a) of the draft CPR).

### ***Discontinued rules***

91. The Commission proposes to relax the rules currently in operation in two significant areas: the appraisal of major projects – typically projects with a total cost of at least €50 million, which accounted for around a third of the total allocation of funds under Cohesion Policy<sup>92</sup>; and its approach to the funding of projects which generate revenue after completion (such as roads with tolls).

### ***Major projects***

92. For the current programme period, as a condition of funding, major projects are subject to detailed cost-benefit analysis by the Member States, and subsequent assessment and approval by the Commission<sup>93</sup>. Over the years, the Commission has developed common standards for such cost-benefit analysis<sup>94</sup>. The Commission's CPR proposal removes all the appraisal requirements specific to major projects. Instead, Member States are required only to provide information to the Commission about 'operations of strategic importance',

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<sup>91</sup> Annual Report concerning the financial year 2017, paragraphs 6.40 to 6.42 and 6.78, recommendation 2

<sup>92</sup> ECA analysis of the Commission's Shared Fund Management Common System database

<sup>93</sup> Articles 101-102 of Regulation (EU) 1303/2013; Chapter III of Regulation (EU) 480/2014; Annex II and Annex III of Regulation (EU) 2015/207

<sup>94</sup> For example, European Commission (2004) Guide to cost benefit analysis of major projects in the context of EC Regional Policies; and European Commission (2014): Guide to Cost-Benefit Analysis of Investment Projects, economic appraisal tool for Cohesion Policy 2014-2020, December 2014

defined as those which provide a key contribution to the achievement of the objectives of a programme, with no further details<sup>95</sup>.

93. In a number of our previous reports we have identified that absence and/or lack of rigorous use of the cost-benefit analysis present a particular risk to sound financial management. At Member State level, for example, we have found weaknesses in the application and quality of the cost-benefit analyses, with a direct impact on subsequent funding decisions<sup>96</sup>. As regards the approval process by the Commission, we established a number of shortcomings in the functioning of the independent quality review<sup>97</sup> of major projects, whilst also noting that this additional assessment had a positive impact on their quality<sup>98</sup>.

94. Against this background we are concerned that while removing all specific appraisal requirements relating to major projects represents a reduction in the general administrative burden, this is outweighed by the increased risk that the co-financed investments do not offer the best value for money.

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<sup>95</sup> Articles 2(4) and 67.6 of COM(2018) 375 final. Under the proposal, operations of strategic importance must be identified in Operational Programmes, examined by the Monitoring Committee, and promoted by beneficiaries through a communications event (Articles 17, 35 and 45 of COM(2018) 375 final)

<sup>96</sup> For example Special Report 1/2008 concerning the procedures for the preliminary examination and evaluation of major investment projects for the 1994-1999 and 2000-2006 programming period; Special Report 8/2010 “Improving transport performance on trans-European rail axes: Have EU rail infrastructure investments been effective?”; Special Report 5/2013 “Are EU Cohesion Policy funds well spent on roads?”; Special Report 6/2014 “Cohesion policy funds support to renewable energy generation — has it achieved good results?”; Special Report 21/2014 “EU-funded airport infrastructures: poor value for money”; Special Report 19/2018 “A European high-speed rail network: not a reality but an ineffective patchwork”

<sup>97</sup> JASPERS – Joint Assistance to Support Projects in European Regions

<sup>98</sup> Special Report 1/2018 “Joint Assistance to Support Projects in European Regions (JASPERS) – time for better targeting”

### *Revenue-generating projects*

95. In the current programme period EU support for revenue-generating projects is capped. Member States can either conduct ad-hoc analysis to determine the funding gap, or they can use fixed flat rates, ranging from 20 % to 30 %, depending on the sector<sup>99</sup>. The CPR proposal dispenses with this restriction on EU funding for such projects, so that all costs related to revenue-generating projects are potentially eligible for EU support. Instead, the proposal specifies that lower EU co-financing rates will be applicable for these projects. It also suggests that financial instruments could become a key delivery mechanism for projects generating revenues (page 9 of the CPR).

96. This proposal is similar in vein to the removal of the ‘no profit principle’ in the recent revision of the Financial Regulation. In our opinion on the revision of the Financial Regulation, we stressed that we do not see the need to remove the “no-profit” principle<sup>100</sup>. The Commission points to potential savings from lower co-financing rates for all projects proposed in the draft CPR (Article 106), and has estimated that eliminating the current rules relating to revenue-generating projects would reduce the total administrative burden by 1 %<sup>101</sup>. In our view, lower co-financing rates and a potential reduction in the administrative burden will not compensate for the significant extra costs to the EU budget which are likely to flow from eliminating the current cap on support. For example, a road project in a less-developed region with a total cost of €10 million might attract EU co-financing of €7 million under the new proposal, some €4.5 million more than it would have attracted under the 2014-2020 rules<sup>102</sup>.

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<sup>99</sup> Article 61.3 of the Regulation (EU) 1303/2013

<sup>100</sup> Opinion 1/2017 concerning the proposal for a revision of the “Financial Regulation”, paragraph 34, (OJ C 91, 23.3.2017, p. 1)

<sup>101</sup> Commission staff working document, impact assessment accompanying proposal for the Regulation of the European Parliament and of the Council on the ERDF and CF, SWD(2018)282 final, page 66

<sup>102</sup> In line with Regulation (EU) 1303/2013, Article 61 and annex V.

97. The Commission and the legislators should consider:

- (45) Re-introducing in the CPR a mandatory independent appraisal and common mandatory appraisal standards, such as cost-benefit analysis, for selecting financially significant operations that represent the best value for money.
- (46) Limiting the EU contribution to revenue-generating projects to what is needed by re-introducing flat rates capping the total eligible expenditure , or using financial instruments as the preferred option to co-finance revenue-generating projects.

**ACCOUNTABILITY ARRANGEMENTS**

***Roles and responsibilities in management and control systems***

98. The draft CPR proposes the ‘roll-over’ of existing management and control systems. In principle we welcome this move: it makes sense to build on the achievements that have been made in the past in terms of strengthened internal control and transfer those elements of the current programme period which are functioning well into the new period<sup>103</sup>. We note that article 72 refers to the need to include ‘systems audits of newly identified managing authorities and authorities in charge of the accounting function’ in the audit authorities’ audit strategy. In our view this requirement should be extended to cover any substantial changes to systems that could have impact on their functioning, such as changes in the approach to management verifications.

99. The CPR proposal also introduces an option to replace the former certifying authority with a new accounting function, with fewer responsibilities (Articles 66.2 and 70). This move is in line with the need for clarification in the coverage and scope of work between managing and certifying authorities that we identified in our briefing paper on simplification<sup>104</sup>. We

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<sup>103</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, guiding principle IV

<sup>104</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraph 88

note that certifying authorities formed an important layer of ex-ante control and increased corrective capacity at the Member State level. Replacing them by the new accounting function, where this is the option chosen, will place greater responsibilities on managing authorities, who will need to be equipped for their role.

100. In the current, 2014-2020, programme period, the process of ‘designating’ authorities by the Member States to carry out certain tasks was relatively cumbersome<sup>105</sup>. We have reported on the links between the significant delays in the designation process in the Member States and their ability to claim EU financing<sup>106</sup>. We therefore welcome the fact that the proposal dispenses with the need for a designation process. Instead, Member States are required only to ‘identify’ a managing authority and an audit authority (Article 65).

101. Member States are required to describe their management and control systems using a template provided in an annex (Article 63.9 and Annex XIV). The key requirements of systems are set out in Annex X. Compared with the current period, the CPR proposes a substantial reduction in the content required in the description. While this represents more freedom and less bureaucracy for the Member States, in our experience there is a risk that the lack of clarity may lead to uncertainty, which tends not to be conducive to effective simplification<sup>107</sup>. In our view, reducing guidance and clarifications on control requirements presents a risk to the quality of the checks undertaken. In the proposal, for example, a number of key terms remain undefined, such as ‘appropriate management verifications’, and ‘newly-identified authority’. Another important missing element is deadlines for establishing audit strategies.

102. The draft CPR contains a separate article (Article 74) on single audit arrangements. This relates to the principle that the Commission and audit authorities should avoid duplication of audits of the same expenditure, with a view to minimising audit costs and reducing the

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<sup>105</sup> Articles 123-124 of Regulation (EU) 1303/2013

<sup>106</sup> Annual Report concerning the financial year 2016, paragraph 6.30, (OJ C 322, 28.9.2017, p. 1)

<sup>107</sup> Briefing paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraph 49

administrative burden on beneficiaries. We support these aims provided they are underpinned by a framework which ensures that expenditure is checked according to the same standards and that the audit results are reported accurately<sup>108</sup>.

103. Although the term was not used, the single audit concept was in part applied in previous programme periods but was limited to the relationship between the audit authorities and the Commission. The main change of the proposal is that single audit arrangements should be extended to cover the relationship between audit and management authorities: audit authorities should, wherever possible, not ask for documents from beneficiaries but use those already available from the managing authorities' work, including their management verifications. Audit authorities should therefore only request additional documents and evidence from beneficiaries 'where, based on their professional judgement, this is required to support robust audit conclusions' (Article 74(1)). Notwithstanding this clause, based on our long experience of auditing in this area, we consider that there is a risk that audit authorities might face undue pressure not to question too closely the work of the managing authorities. Independent public audit is a key element for the transparency and accountability of EU spending<sup>109</sup>. We therefore underline that it is essential that audit authorities are free to audit in line with international audit standards, and the Commission should do everything in its power to facilitate this.

104. The Commission and the legislators should consider:

- (47) Identifying clearly which changes to systems require a mandatory system audit by the audit authorities (Article 72 of the draft CPR). See also detailed suggestions in the annex.
- (48) Adding to the description of the management and control systems (annex XIV to the draft CPR) a description of the management verifications and the relevant criteria to

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<sup>108</sup> Special Report 16/2013 "Taking stock of 'single audit' and the Commission's reliance on the work of national audit authorities in Cohesion", recommendation 5

<sup>109</sup> Briefing Paper "The Commission's proposal for the 2021-2027 Multiannual Financial Framework", July 2018, paragraph 32



enable the audit authorities to verify whether the key control requirements set out under Annex X of the draft CPR are met.

- (49) Clarifying vague definitions and undefined or unrealistic schedules (e.g. ‘newly identified authorities’ and ‘first year of functioning’, in the system description (Annex XIV to the draft CPR) and in Article 72 of the draft CPR.

### ***Standard management and control system***

#### *Management verifications*

105. Management verifications are a key part of the management and control system. The draft CPR defines management verifications as: administrative verifications in respect of beneficiaries’ payment applications; and on the spot verifications of operations. Unlike in previous programme periods, administrative verifications are no longer mandatory but should be risk based (Article 68.2). This means that some beneficiaries’ payment claims might not be subject to management verifications.

106. In principle we welcome the move to a risk-based approach. If it is done well, it has the scope to reduce the administrative burden and improve the effectiveness of checks. We regularly identify management verifications as an element which needs strengthening in terms of the verification of eligible expenditure<sup>110</sup>. Our previous work has found that the scope and intensity of existing management verifications already differ significantly between and within the Member States, indicating that there are different interpretations of what is required<sup>111</sup>. We consider that the risk assessment relating to management verifications should have a clear focus on regularity and should cover all claims; the management

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<sup>110</sup> Annual Report concerning the financial year 2016, paragraph 6.19 together with the reply of the Commission (OJ C 322, 28.9.2017, p. 1); Annual Report concerning the financial year 2015, paragraph 6.36 (OJ C 375, 13.10.2016, p. 1); Annual Report concerning the financial year 2014, paragraph 6.44, (OJ C 373, 10.11.2015, p. 1)

<sup>111</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, page 42

verifications themselves should take place before the payment claims are submitted to the Commission.

### *Audits*

107. Under the draft CPR, audit authorities will be able to draw their sample of operations from groups of ERDF, Cohesion Fund and ESF+ programmes (Article 73.2). As a rule, the sample should be representative and based on statistical sampling methods. However, under the CPR proposal, non-statistical sampling is possible when the audit population is less than 300 sampling units, in which case the sample should cover a minimum of 10 % of the sampling units, selected randomly (Article 73.2). How a 'sampling unit' is interpreted has important implications for the random selection of the sample, but this term is not defined precisely. Based on our wide experience of observing practices in Member States, we consider that the use of non-statistical sampling leads to the risk that resulting samples selected are not big enough to be representative, leading potentially to unreliable error rates and audit opinions.

108. For the audit of programmes covered by the regulation on specific provisions for the European territorial cooperation goal (Interreg), the Commission will select a common sample of operations, to cover all programmes<sup>112</sup>. This is likely to simplify these audits. However, as is the case with sampling under the CPR proposal, there is a risk that such a common sample may not be representative of individual programmes, reducing the reliability of the audit opinions on the functioning of the systems in individual programmes.

109. As regards the scope of audits carried out by the audit authorities in respect of financial instruments, we have drawn attention to the fact that the audit authorities' work has focused on advance payments to the financial instruments, much less likely to be subject to error. We recommended that the Commission ensure that the audits cover disbursement to

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<sup>112</sup> COM(2018) 374 final, Proposal for a regulation on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments, article 48

final recipients – i.e. eligible expenditure<sup>113</sup>. We welcome the fact that the CPR proposal requires Member States to identify in the payment application both the advance payment and also disbursement of funds to final recipients (Article 86.2). However, the CPR proposal does not define the eligible expenditure to be audited by the audit authorities, nor does it specify that only those funds disbursed to final recipients should be taken into account when calculating the residual error rate.

110. As a new possibility for the post 2020 period, Member States may incur eligible expenditure outside the programme area or outside the EU (Article 57.4). The draft CPR does not provide any provisions for safeguarding the necessary audit rights of either the audit authority, the Commission or the ECA in these circumstances<sup>114</sup>. This is an important accountability gap in the proposal.

111. The Commission and the legislators should consider:

- (50) Clarifying through a delegated act or guidance the requirements for the risk-based approach to management verifications. See also detailed comments on Article 68.2 of the draft CPR in the annex.
- (51) Establishing criteria for grouping programmes (including confidence levels) and for small populations to ensure representative sampling by means of a delegated act referred to in the Article 73.4 of the draft CPR. This issue for consideration also applies to audit sampling under the enhanced arrangements (paragraph 115 below).
- (52) Introducing several samples for groups of Interreg programmes, or one sample with strata exhibiting the same characteristics (Article 48 of the draft ETC Regulation).

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<sup>113</sup> Annual Report concerning the financial year 2016, paragraph 6.35 and recommendation 2 (OJ C 322, 28.9.2017, p. 1); Annual Report concerning the financial year 2015, paragraphs 6.59 to 6.61 and recommendation 5, (OJ C 375, 13.10.2016, p. 1)

<sup>114</sup> Annex XI includes details on the audit trail, but these are general and do not refer to the specific case of operations taking place outside the EU

(53) Clarifying in Article 73 of the draft CPR that audits of operations with respect to financial instruments should cover eligible expenditure as set out under Article 62 and exclude advance payments to financial instruments.

(54) Ensuring there are clear audit rights for expenditure outside the EU and clarifying this in Article 57.4 of the draft CPR.

### ***Enhanced proportionate arrangements for management and control systems***

#### *Arrangements*

112. A radical change proposed in the draft CPR is that, depending on fulfilling certain conditions, Member States may apply for ‘enhanced proportionate arrangements’ for programmes. Under these arrangements, national procedures would be used as management verifications, audit authority audits would be limited to a sample of 30, with no system audits, and the Commission’s audits would be limited to a review of the audit authority work (Article 77).

113. We have a number of concerns about this proposal, as set out in the following paragraphs. As a general observation we note that, in the absence of an impact assessment (paragraph 5), there is no evidence that the risks involved are outweighed by the potential benefits of simplification through lower administrative costs and a reduced administrative burden for beneficiaries. The proposal thus runs counter to our opinion that ‘any proposal for administrative simplification should be based on robust evidence’<sup>115</sup>. We also note that the strengthened accountability arrangements for cohesion policy from the 2007-2013 period onwards have contributed to a significant reduction in the error rates we report <sup>116</sup>.

114. In terms of the three elements of the enhanced arrangements, we note that the text of Article 77(a) concerning management verifications is not as clear as it needs to be, given the

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<sup>115</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraphs 19, 86 and annex III

<sup>116</sup> Briefing Paper “Simplification in post-2020 delivery of Cohesion Policy”, May 2018, paragraph 39

potential impact of this legislation. More importantly, since management verifications under the draft CPR can be risk-based (paragraph 105), it is not clear what the added value of the provision is: a managing authority could use the provisions of the standard arrangements to obtain the benefits envisaged in the enhanced arrangements.

115. The second element of the proposal is reduced audit by the audit authority. We are concerned at the potential limit on the audit authority's sample size – 30 units from what might be a group of programmes (see also paragraph 107 above). Article 77(b) entails the risk that audit authorities interpret this too loosely, with the consequence that such a sample is not big enough to be representative, leading to unreliable reported error rates.

116. The third element of the proposal relates to limited audit on the part of the Commission. Under the proposal, the Commission's own audits would explicitly be barred from going beyond the level of the audit authority to beneficiaries unless there was the suspicion of a 'serious deficiency in the work of the audit authority'. This approach is inherent in the single audit principle (paragraphs 103) and does not, therefore, need to be regulated in this way: international audit standards already require auditors to ensure that they obtain the evidence necessary to form robust audit opinions.

### *Conditions*

117. The conditions for these arrangements are set out in Article 78. The main criterion<sup>117</sup> is that the Commission's published annual activity reports for the two preceding years confirm that the programme's management and control system is functioning effectively, and that the total error rate for each year is below 2 %. This means that:

- There is no guarantee that the system assessed previously as functioning effectively will be the same as the one in operation under the new enhanced arrangements – particularly given the move from one programme period to the next. We note that audit authorities are not expected to conduct systems audits before the enhanced

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<sup>117</sup> The only other criterion relates to the Member State's "participation ... in the enhanced cooperation on the European Public Prosecutor's Office"

arrangements are applied, with the risk that the system is not compatible with EU requirements.

- It is not clear from the text of the draft CPR whether the error rate used to assess qualification for the enhanced arrangements will have undergone the Commission's legality and regularity checks. The error rate reported in the Commission's annual activity reports is the error rate reported by the audit authorities. This error rate might be understated as it does not take account of subsequent corrections following the Commission's legality and regularity checks<sup>118</sup>. Assessing whether a programme might qualify for the enhanced arrangements on the basis of an unreliable measure would only add to the risks involved.
- It is not clear how the additional criterion relating to cooperation with the European Public Prosecutor's Office will be applied.

#### *Ending the enhanced arrangements*

118. A further source of concern relates to the arrangements for ending these enhanced arrangements (referred to as 'adjustment'), and reverting to the standard arrangements (Article 79). This process will take a number of years, requiring additional audit work, analysis of the next annual control report, systems audits, and time for the Member State to put forward its case. In this period – when Member States are potentially operating with a relatively unreliable system but with light management and control – there is naturally a higher risk that errors will occur. However, the proposed arrangements significantly delay the scope for remedial action.

119. In our briefing paper on simplification we drew attention to the strengthened accountability arrangements in operation in the current and previous programme periods,

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<sup>118</sup> Our audits show that the Commission's acceptance of accounts and the published error rates do not reflect its assessment of the legality and regularity of expenditure. As a consequence it might be necessary to adjust published error rates once the assessment has been made, which may only be resolved up to three years ahead. See Annual Report concerning the financial year 2017 - Chapter 6, paragraph 6.68

with the Commission drawing assurance on the regularity of spending by relying on checks performed by audit authorities in the Member States<sup>119</sup>. The scope under the standard arrangements to make management verifications risk-based should reduce the administrative burden for systems that are functioning well. The proposed enhanced arrangements risk substantially weakening the assurance obtained by the Commission. We consider that the changes proposed under the standard arrangements offer sufficient scope for reducing the administrative burden.

120. The Commission and legislators should consider:

- (55) Whether these risks inherent under the enhanced arrangements are outweighed by the potential benefits of simplification (Articles 77-79 of the draft CPR).

***Submission of accounts and financial corrections***

121. As for the 2014-2020 period, under the CPR proposal the Commission will initially reimburse 90 % of Member States' interim payment claims and pay the final balance after it has examined the accounts (Articles 87 and 94)<sup>120</sup>. For the Commission to 'accept' the accounts for the purposes of reimbursement, it must be satisfied that they are 'complete, accurate and true' and the residual error rate reported by the audit authority is below 2 %, (Article 93). The Commission would pay the balance even in cases where the opinion of the audit authority identifies shortcomings in the functioning of the system and/or the legality and regularity of the underlying transactions as long as the accounts are assessed as complete, accurate and true (Articles 95-96).

122. The Commission's checks on legality and regularity can only take place after this initial process of examination and closure of accounts and payment of the final balance. The

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<sup>119</sup> Briefing Paper "Simplification in post-2020 delivery of Cohesion Policy", May 2018, paragraphs 39-40

<sup>120</sup> The accounts are one element of the 'assurance package' Member States are required to submit annually to the Commission, together with management declarations by the managing authority, audit opinions and annual control reports prepared by the audit authority (Article 92)

process envisaged in the proposal does not, therefore, take into account any subsequent financial corrections by the Commission, nor the need to amend error rates accordingly. As a consequence, acceptance of accounts by the Commission does not provide certainty to beneficiaries, since the related expenditure is subject to additional Commission checks after the actual closure of the accounts. We drew attention to this issue in our opinion on the proposal of the CPR for the programme period 2014-2020<sup>121</sup>. Recently, we recommended that the Commission carry out sufficient checks to conclude on the effectiveness of audit authorities' work and obtain reasonable assurance on the regularity of expenditure at the latest in the annual activity report following the year of accepting the accounts<sup>122</sup>. It is equally important for the CPR proposal for the period 2021-2027 to introduce clear time limits for the final decision.

123. The effectiveness of the system of accounts depends on the incentive they provide for the Member States to recover irregular amounts and to lead to improvements in systems<sup>123</sup>. In this respect we welcome the fact that the CPR proposal maintains the possibility to impose net financial corrections for irregular expenditure detected by the Commission in the expenditure contained in the accepted accounts (Article 98). We consider that the proposal should also refer to irregularities detected by the Court of Auditors in this context, as is the case in the regulation for the current period<sup>124</sup>. However, the proposal removes net financial corrections on the grounds of serious deficiencies in the functioning of the management system, a possibility that is available in the 2014-2020 period. Under the CPR proposal,

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<sup>121</sup> Opinion No 7/2011 on "The proposal for a Regulation of the European Parliament and of the Council laying down common provisions", paragraphs 31-33, (OJ C 47, 17.2.2012, p. 1)

<sup>122</sup> See Annual Report concerning the financial year 2017, Chapter 6, Recommendation 7

<sup>123</sup> Opinion No 7/2011 on "The proposal for a Regulation of the European Parliament and of the Council laying down common provisions", paragraph 36, (OJ C 47, 17.2.2012, p. 1)

<sup>124</sup> Article 145.7 of Regulation (EU) 1303/2013



Member States would be able to replace irregular expenditure<sup>125</sup>. In our view, this significantly weakens the incentive for Member States to improve their systems.

124. The value of the management declaration will depend on the underlying work of the managing authority. We note that the template of the management declaration, one of the four elements of the assurance package (paragraph 121 above) set out in Annex XV of the proposal, does not cover the proper functioning of the control system, as required by the Financial Regulation<sup>126</sup>. This inconsistency has implications for the audit opinion of the audit authority, since it issues an audit opinion on the functioning of the system based on the management declaration.

125. The Commission and the legislators should consider:

- (56) Introducing clear timelines for the completion of legality and regularity checks on the accounts by the Commission (Articles 93-96 of the draft CPR). The Commission should carry out sufficient regularity checks to conclude on the regularity of expenditure at the latest in the DG's annual activity report following the year of accepting the accounts.
- (57) Adding to the reasons for the Commission not to accept the submitted accounts a qualified and adverse opinion from the audit authority on the effective functioning of the systems and legality and regularity (Articles 95 and 96 of the draft CPR).
- (58) Reintroducing the possibility of net financial corrections for serious deficiencies in the functioning of the system (Article 98.1 and 98.4 of the draft CPR).

### ***Conditions for attestation by the Court***

126. In our Strategy for 2018-2020 we signalled our intention to apply a new approach to our Statement of Assurance (SoA), drawing as far as possible assurance from the legality and regularity of information provided by auditees, as a step towards the organisation of the SoA

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<sup>125</sup> Article 145.7 of Regulation (EU) 1303/2013

<sup>126</sup> Article 63.6 of Regulation (EU, Euratom) 2018/1046

as an 'attestation engagement'. This would mean that we assess whether the residual error rate established by the Commission, based on the rates provided by the audit authorities, is a reliable estimate. Under this approach we would take account of the revised control and assurance framework in Cohesion and aim to use the work of the other auditors involved – the audit authorities and the Commission, where appropriate – with the aim of reducing our own audit work and thus the overall audit burden.

127. As a pilot exercise, to establish whether a new approach might be feasible, the 2017 SoA for MFF sub-heading 1b (Economic, Social and Territorial Cooperation), reported in chapter 6 of our 2017 Annual Report, was based on testing a sample of transactions that had already been audited by the audit authorities.

128. In assessing the results of this pilot exercise, we identified four conditions for our ability to continue with the move to an attestation engagement:

- i. There is a residual error rate whose correctness we can attest
- ii. This error rate is fit for purpose (robust and reliable)
- iii. The Commission provides the required information in time for our purpose
- iv. The conditions to use the work of other auditors are fulfilled (independence, professional competence, scope of the work, cost-effectiveness, audit conclusions based on sufficient evidence)

129. The table below is our summary assessment of whether these conditions were fulfilled in our 2017 SoA pilot exercise. It also provides our opinion on whether the shortcomings we found are such that CPR could address them; and whether they are in practice addressed in the CPR proposal.

Condition	Main shortcomings identified in 2017 SoA	Can these shortcomings be addressed by the CPR?	Are they addressed by the CPR?
i. Residual error rate whose correctness we can attest?	There is no total residual error rate common for the MFF sub-heading. Commission aggregates the indicator by DGs only. In addition, the error rate referred to in the AAR relates to expenditure that has not gone through the full control cycle.	No (matter for the Financial Regulation)	N/A
ii. Residual error rate fit for purpose?	The main weakness is that the residual error rate of the specific accounting year we examine may include advances to financial instruments and state aid projects. If this is the case, the residual error rate may be understated.	Yes	Partially
iii. Commission provides information on time?	The Commission's estimate of the error rate in its 2017 AAR for expenditure included in the accounts it accepted in May 2017 is incomplete as it could still be subject to corrections.	Yes	No
iv. Conditions for using the work of other auditors fulfilled?	Sampling and documentation weaknesses	Partially	Partially

130. We are of the view that the CPR cannot itself address all relevant conditions for attestation. Member States and the Commission would need to design the arrangements in the areas falling within their remit to address the shortcomings. Overall, the draft CPR does not address all the shortcomings identified in the pilot SoA 2017 that it could have addressed. We conclude, therefore, that the draft CPR only partially meets the conditions for an attestation engagement for either the standard or enhanced arrangements. In this context we note that the purpose of the CPR is not to facilitate a changed approach to our audit. The mismatch between our needs as regards an attestation engagement and the provisions of the proposed legislation have not arisen by design, but as a consequence of the different objectives involved.

131. We have highlighted above the risks that we see under the proposed new arrangements, the effect of which would be to weaken the control environment, particularly under the enhanced arrangements. This in turn affects the assurance obtained by the Commission, and subsequently the conditions for attestation. An attestation engagement

could reasonably be applied for the standard management and control systems. As a minimum, the following adjustments would need to be made:

- Reducing the sampling risk by proposing in the delegated act off-the-shelf statistical sampling methods to be applied consistently by the audit authorities in specific circumstances. This proposal could also require the Commission to validate the sampling method of the audit authorities before the final sample is drawn.
- Adjusting Article 73 to ensure that, in the case of financial instruments, audits of operations only cover expenditure incurred and not advances paid to financial instruments.
- Providing the audit authorities with the minimum requirements concerning the scope of the audit work to be done and how it should be documented – in consultation with the ECA.
- In line with the recommendation we made in our 2017 annual report<sup>127</sup>, the Commission should focus its compliance reporting on expenditure that has gone through the entire control cycle. The CPR should require the Commission to carry out sufficient regularity checks to conclude on the effectiveness of audit authorities' work and obtain reasonable assurance on the regularity of expenditure at the latest in the annual activity reports it publishes following the year of accepting the accounts.

132. The proposed enhanced proportionality arrangements add further complications to the requirements for an ECA attestation engagement (see paragraphs 112-120 above). These would need to be clarified – along with the need to make the adjustments set out in the previous paragraph before an attestation engagement was possible. In addition, the proposal for enhanced arrangements would lead to the situation where the ECA, in the absence of management verification and audit by the Commission or audit authority, would

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<sup>127</sup> Annual Report concerning the financial year 2017, paragraph 6.78 recommendation 6

have to audit the systems of purely national authorities, who would have to make all documentation available to us that we considered necessary to fulfil our Treaty mandate.

### **CONCLUDING COMMENTS**

133. Overall, the Commission's legislative proposal has succeeded in simplifying the text. However, the focus on value for money has not been increased and the accountability arrangements have in part been significantly weakened.

134. The proposal itself is significantly shorter and it usefully contains the key documents and templates needed for programming by the Member States. In addition, it largely maintains the programming framework established in previous periods. This should lead to stable rules that are conducive to smoother programming. However, a number of provisions lack clarity, which may give rise to different interpretations, affecting legal certainty.

135. The proposal offers greater flexibility in allocating and moving funds around through, for example two-stage programming (5+2), and the combination of financial instruments with grants. This increases the capacity to respond to changing circumstances. However, there is a risk that this increased flexibility, in particular two-stage programming, will be accompanied by a significant increase in the administrative workload.

136. As regards performance orientation, unlike in previous periods the proposal is not embedded within an EU-wide common strategy. It fails to articulate a clear vision as to what the EU wishes to achieve through the policy. Furthermore, with the aim of simplification the proposal dispenses with many elements designed to support the better targeting of funds on results, such as the ex-ante evaluation of programmes, performance reserve, and common appraisal standards for major projects.

137. On the positive side, the draft proposal offers a wide range of simplified forms of support (such as simplified cost options and financing not linked to costs) that, if properly applied, have the potential to reduce administrative burden and shift the focus from inputs to outputs and results. We also welcome the Commission's aim to strengthen governance and other conditions designed to create a favourable environment for cohesion spending, such as links to the European Semester process and the replacement of ex ante

conditionalities with enabling conditions. In this context, we provide a number of considerations for the Commission and the legislators to help them realise the full potential of the proposed changes.

138. The proposal seeks to rationalise and streamline accountability arrangements. For example, it replaces exhaustive management verifications by risk-based verifications. While we support these ambitions, we are of the view that there is scope to tighten up the management and control system in some places.

139. The proposal also offers the possibility of a more radical simplification for systems with a good track record ('enhanced proportionate arrangements'), whereby the Commission would substantially reduce its supervision and rely largely on national checks. This concept breaks with the main elements underpinning the Commission's assurance model developed in the last two decades and thus reduces the assurance that it can obtain. It also presents challenges for the way that we conduct our Statement of Assurance audits.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 25 October 2018.

*For the Court of Auditors*

Klaus-Heiner LEHNE  
*President*

**ANNEX****Detailed comments and drafting suggestions (comments and drafting suggestions on articles from the CPR)**

*The following drafting suggestions reflect some, but not all the considerations raised in this Opinion. It is for the Commission and the legislators to take account of these considerations and reflect them in the appropriate articles of the proposed CPR and/or Fund-specific Regulations.*

Text in the proposal	Court's suggestion	Comments
<b>Proposal for a Reregulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, COM(2018) 375 final</b>		
List of content		The proposed Regulation should indicate a list of content following its structure.
<p>Whereas (...) (2)</p> <p>In order to further develop a coordinated and harmonised implementation of Union Funds implemented under shared management namely the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, measures financed under shared management in the European Maritime and Fisheries Fund ('EMFF'), the Asylum and Migration Fund ('AMIF'), Internal Security Fund ('ISF') and Integrated Border Management Fund ('BMVI'), financial rules based on Article 322 of the TFEU should be established for all these Funds ('the Funds'), clearly specifying the scope of application of the relevant provisions. In addition, common provisions based on Article 177 of the TFEU should be established to cover policy specific rules for the ERDF, the ESF+, the Cohesion Fund and the EMFF.</p>		<p>The proposed provision in paragraph 2 should clarify, after the first sentence, what do “financial rules” stand for, considering that the proposed Regulation contains non-financial provisions applicable to all funds.</p> <p>At the end of paragraph 2, a reference should be added related to EMFF as the referred Article 177 of the TFEU, concerns only the structural funds.</p>
Article 2 Definitions		See considerations 22) and 37)
Article 4 Policy objectives		<p>See consideration 1)</p> <p>The Commission and the legislators should in particular consider setting clear targets for climate action spending for the three</p>

Text in the proposal	Court's suggestion	Comments
		Cohesion Funds, consistent with the 25% target for such spending for the EU budget as a whole.
Article 7 Preparation and submission of the Partnership Agreements		See consideration 18)
Article 8 Content of the Partnership Agreement		See considerations 16), 19) and 20)
<p>Article 11 Enabling conditions</p> <ol style="list-style-type: none"> <li>1. For each specific objective, prerequisite conditions for its 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.</li> <li>2. When preparing a programme or introducing a new specific objective as part of a programme amendment, the Member State shall assess whether the enabling conditions linked to the selected specific objective are fulfilled. 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.</li> <li>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.</li> <li>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 accordingly and give it the opportunity to present its observations within one month.</li> </ol>	<p>Article 11 Enabling conditions</p> <ol style="list-style-type: none"> <li>1. For each specific objective <u>or area of support or type of operation</u>, prerequisite conditions for its effective and efficient implementation ('enabling conditions') are laid down in this Regulation. Annex III lays down horizontal enabling conditions applicable to all specific objectives <u>or areas of support or type of operation</u> 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.</li> <li>2. When preparing a programme or introducing a new specific objective <u>or an area of support or type of operation</u> as part of a programme amendment, the Member State shall assess whether the enabling conditions linked to the selected specific objective <u>or area of support or type of operation</u> are fulfilled <u>taking into account the Country Reports and country specific recommendations stemming from the European Semester process</u>. 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.</li> <li>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.</li> <li>4. The Commission shall, within three months of receipt of the information referred to in paragraph 3, perform an</li> </ol>	<p>See also considerations 9), 10) and 11)</p>



Text in the proposal	Court's suggestion	Comments
<p>5. Expenditure related to operations linked to the specific objective cannot be included in payment applications until the Commission has informed the Member State of the fulfilment of the enabling condition pursuant to paragraph 4. The first sub-paragraph shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.</p> <p>6. The Member State shall ensure that enabling conditions are fulfilled and applied 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 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, expenditure related to the specific objective concerned cannot be included in payment applications as from the date the Commission informs the Member State accordingly.</p> <p>7. Annex IV shall not apply to programmes supported by the EMFF.</p>	<p>assessment <u>taking into account the country reports and country specific recommendations stemming from the European Semester</u> 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 accordingly and give it the opportunity to present its observations within one month.</p> <p>5. Expenditure related to operations linked to the specific objective <u>or area of support or type of operation</u> cannot be included in payment applications until the Commission has informed the Member State of the fulfilment of the enabling condition pursuant to paragraph 4. The first sub-paragraph shall not apply to operations that contribute to the fulfilment of the corresponding enabling condition.</p> <p>6. The Member State shall ensure that enabling conditions are fulfilled and applied 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 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, expenditure related to the specific objective <u>or area of support or type of operation</u> concerned cannot be included in payment applications as from the date the Commission informs the Member State accordingly.</p> <p>7. <del>Annex IV shall not apply to programmes supported by the EMFF.</del></p>	
<p>Article 12 Performance framework</p> <p>1. 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:</p>	<p>Article 12 Performance framework</p> <p>1. 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:</p>	

Text in the proposal	Court's suggestion	Comments
<p>(a) the output and result indicators linked to specific objectives set in the Fund-specific Regulations;            (b) milestones to be achieved by the end of the year 2024 for output indicators; and            (c) targets to be achieved by the end of the year 2029 for output and result indicators.</p> <p>2. Milestones and targets shall be established in relation to each specific objective within a programme, with the exception of technical assistance and of the specific objective addressing material deprivation set out in Article 4(c)(vii) of the ESF+ Regulation.</p> <p>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.</p> <p>(...)</p>	<p>(a) the output and result indicators linked to specific objectives <u>or area of support or type of operation</u> set in the Fund-specific Regulations;            (b) milestones to be achieved by the end of the year 2024 for output <u>and result</u> indicators; and            (c) targets to be achieved by the end of the year 2029 for output and result indicators. <u>Targets shall be based on a realistic estimate of the total financial allocations for the period.</u></p> <p>2. Milestones and targets shall be established in relation to each specific objective <u>or area of support or type of operation</u> within a programme, with the exception of technical assistance and of the specific objective addressing material deprivation set out in Article [4(c)(vii)] of the ESF+ Regulation.</p> <p>3. Milestones and targets shall allow the Commission and the Member State to measure progress towards the achievement of the specific objectives <u>or area of support or type of operation</u>. They shall meet the requirements set out in Article [33(3)] of the Financial Regulation.</p> <p>(...)</p>	
Article 14 Mid-term review		See considerations 14) and 15)
Article 15 Measures linking effectiveness of Funds to sound economic governance (...) Article 15(13) Paragraphs 1 to 12 shall not apply to priorities or programmes under Article 4(c)(v)(ii) of ESF+ Regulation.		See considerations 4), 5) and 6)  In paragraph 13 of this article, adjustment is needed to the reference made to the provision(s) of the ESF+ fund-specific regulation.
Article 16 Preparation and submission of programmes		See consideration 21)
Article 17 Content of programmes		See considerations 3) and 16)
Article 19 Amendment of programmes		See consideration 2)
Article 21 Transfer of resources		See consideration 2)
Article 29 Technical assistance at the initiative of the Commission		See consideration 12)
Article 30 Technical assistance of Member States		See consideration 12)

Text in the proposal	Court's suggestion	Comments
Article 31 Flat-rate financing for technical assistance of Member States		See consideration 13)
Article 32 Financing not linked to costs for technical assistance of Member States		See consideration 13)
Article 35. Functions of the monitoring Committee 1.The monitoring committee shall examine: (...)	Article 35. 1.The monitoring committee shall examine: (...) <u>j) progress in implementing actions related to the reduction of the administrative burden on beneficiaries</u> (...) 3. The monitoring committee may make observations to the <u>managing authority regarding the elements covered by paragraph 1 and 2 including actions related to the reduction of the administrative burden on beneficiaries. The monitoring committee shall monitor actions taken as a result of its observations.</u>	The proposed Regulation should require Monitoring Committee to examine progress towards reducing the administrative burden.  Newly introduced paragraph ensures alignment between article 35 and 69.2.
Article 36 Annual performance review		See consideration 29)
Article 37 Transmission of data		See considerations 26) and 28) The Commission and the legislators should consider requiring that the results of climate action spending are monitored and reported upon, as well as the levels of planned expenditure.
Article 39 Evaluations by the Member State Article 40 Evaluation by the Commission		See consideration 30)
Article 49 Flat-rate financing for indirect costs concerning grants Article 50 Direct staff costs concerning grants Article 51 Flat rate financing for eligible costs other than direct staff costs concerning grants	Article 49 Flat-rate financing for indirect costs concerning grants  Article 50 Direct staff costs concerning grants <del>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 46 or in Article 15 of Directive 2014/25/EU of the European Parliament and of the Council 47.</del> For the AMIF, the ISF and the BMVI, any costs subject to public procurement and the direct staff costs of that operation shall be excluded from the basis for calculation of the flat rate.	See also considerations 39) and 40)

Text in the proposal	Court's suggestion	Comments
	Article 51 Flat rate financing for eligible costs other than direct staff costs concerning grants	
Article 52 Financial instruments		See consideration 31)
Article 53 Implementation of financial instruments		See considerations 32) and 33)
Article 57 Eligibility		See consideration 54)
Article 58 Non eligible costs (...) Article 58(c) value added tax ('VAT'), except for operations the total cost of which is below EUR 5 000 000.		See consideration 44)
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 makes use of the option referred to in Article 66(2), the body concerned shall be identified as a programme authority. Those same authorities may be responsible for more than one programme. (...) 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. (...) 5. The body implementing the programme co-fund as referred to in Article [11] of Regulation EU (...) [Horizon Europe Rules for Participation] shall be identified as an intermediate body by the managing authority of the relevant programme, in line with paragraph 3.	Article 65 Programme authorities  1. For the purposes of Article [63(3)] of the Financial Regulation, the Member State shall <del>identify</del> <u>appoint</u> for each programme a managing authority and an audit authority. Where a Member State makes use of the option referred to in Article 66(2), the body concerned shall be <del>identified</del> <u>appointed</u> as a programme authority. Those same authorities may be responsible for more than one programme. (...) 3. The managing authority may <del>identify</del> <u>appoint</u> 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. (...) 5. The body implementing the programme co-fund as referred to in Article [11] of Regulation EU (...) [Horizon Europe Rules for Participation] shall be <del>identified</del> <u>appointed</u> as an intermediate body by the managing authority of the relevant programme, in line with paragraph 3.	
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 (...)	Article 66 Functions of the managing authority 1. The managing authority shall be responsible for managing the programme, <u>in accordance with the principle of sound financial management</u> , with a view to delivering the objectives of the programme. In particular, it shall have the following functions (...)	
Article 67 Selection of operations by the managing authority (...)	Article 67 Selection of operations by the managing authority (...)	See also considerations 42) and 43)

Text in the proposal	Court's suggestion	Comments
<p>2. Upon request of the Commission, the managing authority shall consult the Commission and take its comments into account prior to the initial submission of the selection criteria to the monitoring committee and before any subsequent changes to those criteria.</p>	<p>Upon request of the Commission, the managing authority shall consult the Commission and take its comments into account prior to the initial submission of the selection criteria to the monitoring committee and before any subsequent changes to those criteria.  <u>The Commission will identify the unnecessary burdensome requirements and provide to Member States recommendations on how to estimate it.</u></p>	
<p>Article 68 Programme management by the managing authority</p> <p>(...)  Article 68(2)  Management verifications referred to in point (a) of paragraph 1 shall be risk-based and proportionate to the risks identified as defined in a risk management strategy.  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.  (...)</p>	<p>Article 68 Programme management by the managing authority</p> <p>(...)  Article 68(2)  Management verifications referred to in point (a) of paragraph 1 shall be risk-based and proportionate to the risks identified as defined in a risk management strategy.  Management verifications shall include administrative verifications in respect of payment claims by beneficiaries and on-the-spot verifications of operations. <del>They shall be carried out at the latest before preparation of the accounts in accordance with Article 92.</del>  (...)</p>	<p>See also consideration 50)</p>
<p>Article 72 Audit Strategy</p> <p>1. (...) The audit strategy shall include system audits of newly identified managing authorities and authorities in charge of the accounting function within nine months following their first year of functioning. (...)</p>	<p>Article 72 Audit Strategy</p> <p>1. (...)The audit strategy shall include system audits of newly identified managing authorities and authorities in charge of the accounting function, <u>as well as changes to the methodology governing management verifications and IT systems</u>, within nine months following their first year of functioning.  (...)</p>	<p>See also consideration 47) and 49)</p>
<p>Article 73 Audits of operations</p> <p>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</p>	<p>Article 73 Audits of operations</p> <p>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. <u>By derogation, in case of financial instruments audit of operations should cover eligible expenditure as defined under article 62.</u></p>	<p>See also considerations 51) and 53)</p>

Text in the proposal	Court's suggestion	Comments
<p>Article 75</p> <p>(...)</p> <p>Article 75 (4)</p> <p>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.</p> <p>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.</p>	<p>Article 75</p> <p>(...)</p> <p>Article 75 (4)</p> <p>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.</p> <p>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.</p> <p><u>Audit or verification agreements within the EIB and external auditors shall not restrict ECA's access to information necessary for the audit of the Union Funds.</u></p>	<p>See also considerations 34), 35) and 36).</p>
<p>Article 77 Enhanced proportionate arrangements</p> <p>Article 78 Conditions for application of enhanced proportionate arrangements</p> <p>Article 79 Adjustment during the programming period</p> <p>(...)</p> <p>Article 79(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 take remedial actions.</p>	<p>Article 77 Enhanced proportionate arrangements</p> <p>Article 78 Conditions for application of enhanced proportionate arrangements</p> <p>Article 79 Adjustment during the programming period</p> <p>(...)</p> <p>Article 79(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). <u>and The managing authority shall take remedial actions, and report to the monitoring committee and the Commission about the envisaged remedial actions and their result.</u></p>	<p>See also consideration 55)</p>
<p>Article 88</p> <p>(...)</p> <p>Article 88(3)</p> <p>(...)</p>	<p>Article 88</p> <p>(...)</p> <p>Article 88(3)</p> <p>(...)</p>	<p>See consideration 41)</p>

Text in the proposal	Court's suggestion	Comments
Commission or Member States audits shall exclusively aim at verifying that the conditions for reimbursement by the Commission have been fulfilled.	Commission or Member States audits shall exclusively aim at verifying that the conditions for reimbursement by the Commission have been fulfilled.  <u>By derogation, if operation or a project forming a part of an operation is implemented through the public procurement, the audit shall also cover compliance with the public procurement rules.</u>	
Article 93 Examination of accounts Article 94 Calculation of the balance Article 95 Procedure for the examination of accounts Article 96 Contradictory procedure for the examination of accounts		See considerations 56) and 57)
Article 98 Financial corrections by the Commission		See consideration 58)
Annex I Dimensions and codes for the types of intervention for the ERDF, the ESF+ and the Cohesion Fund - Article 17(5)		See consideration 25)  The Commission and the legislators should also consider reducing the coefficient for the calculation of support to climate change objectives for newly built railways to 40%, and the coefficient for digitalisation of road transport to 0%.
Annex II Template for Partnership Agreement		See consideration 16)
Annex III - Horizontal enabling conditions – Article 11(1) and		See considerations 7) and 8)
Annex IV - Thematic enabling conditions applicable to ERDF, ESF+ and the Cohesion Fund – Article 11(1) (...) [Column "Specific objectives"] (...) 2.2 Promoting renewable energy through investment in generation capacity ERDF and Cohesion Fund: 2.2 Promoting renewable energy through investment in generation capacity (...) ERDF and Cohesion Fund: 2.5 Promoting water efficiency ERDF and Cohesion Fund:	Annex IV - Thematic enabling conditions applicable to ERDF, ESF+ and the Cohesion Fund – Article 11(1) (...) [Column "Specific objectives"] (...) 2.2 Promoting renewable energy <del>through investment in</del> <u>generation capacity</u> ERDF and Cohesion Fund: 2.2 Promoting renewable energy <del>through investment in</del> <u>generation capacity</u> (...) ERDF and Cohesion Fund: 2.5 Promoting <u>sustainable water efficiency management</u> ERDF and Cohesion Fund:	See also considerations 7) and 8)

Text in the proposal	Court's suggestion	Comments
<p>2.6 Developing the (Transition to) circular economy, through investment in the waste sector and resource efficiency</p> <p>ERDF and Cohesion Fund: 2.6 Promoting green infrastructure in the urban environment and reducing pollution (...) 3.3 sustainable, climate resilient, intelligent and intermodal national, regional and local mobility, including improved access to TEN-T and cross-border mobility (...) ESF: 4.1.1 Improving access to employment of all jobseekers, including youth, and of inactive people and promoting self-employment, and the social economy;</p> <p>4.1.2 Modernising labour market institutions and services to ensure timely and tailor-made assistance and support to labour market matching, transitions and mobility; (...) ESF: 4.1.3 Promoting a better work/life balance including access to childcare, a healthy and well-adapted working environment addressing health risks, adaptation of workers to change and healthy and active ageing; (...) ESF: 4.2.1 Improving the quality, effectiveness and labour market relevance of education and training systems; (...) 4.2.3 Promoting equal access, in particular for disadvantaged groups, to quality and inclusive education and training, from early childhood education and care through general and vocational education and training and to tertiary level;</p>	<p><del>2.6 Developing the</del><u>Promoting the</u> (Transition to) a circular economy, <del>through investment in the waste sector and resource efficiency</del></p> <p>ERDF and Cohesion Fund: 2.76 <u>Enhancing biodiversity</u>, <del>Promoting</del> green infrastructure in the urban environment and reducing pollution (...) 3.3 <u>Developing</u> sustainable, climate resilient, intelligent and intermodal national, regional and local mobility, including improved access to TEN-T and cross-border mobility (...) ESF: 4.1.1 Improving access to employment of all jobseekers, <u>including in particular youth and long-term unemployed</u>, and of inactive people, <del>and</del> promoting self-employment and the social economy; 4.1.2 Modernising labour market institutions and services to <u>assess and anticipate skills needs and</u> ensure timely and tailor-made assistance and support to labour market matching, transitions and mobility; (...) ESF: 4.1.3 Promoting <u>women's labour market participation</u>, a better work/life balance including access to childcare, a healthy and well-adapted working environment addressing health risks, adaptation of workers, <u>enterprises and entrepreneurs</u> to change, and <u>active and</u> healthy <del>and active</del>-ageing; (...) ESF: 4.2.1 Improving the quality, effectiveness and labour market relevance of education and training systems, <u>to support acquisition of key competences including digital skills</u>; (...) 4.2.3 Promoting equal access <u>to and completion of quality and inclusive education and training</u>, in particular for disadvantaged groups, <u>from early childhood education and care through general and vocational education and training and to tertiary level</u>, as well as adult education and learning, including</p>	



Text in the proposal	Court's suggestion	Comments
<p>(...)</p> <p>ESF: 4.3.1 Promoting active inclusion including with a view to promoting equal opportunities and active participation, and improving employability;</p> <p>ESF: 4.3.2 Promoting socio-economic integration of marginalised communities such as the Roma;</p> <p>(...)</p> <p>ESF: 4.3.4 Enhancing the equal and timely access to quality, sustainable and affordable services; improving accessibility, effectiveness and resilience of healthcare systems; improving access to long-term care services</p> <p>(...)</p>	<p><u>facilitating learning mobility for all; to quality and inclusive education and training from early childhood education and care through general and vocational education and training and to tertiary level;</u></p> <p>(...)</p> <p>ESF: 4.3.1 <del>Promoting</del><u>Fostering</u> active inclusion including with a view to promoting equal opportunities and active participation, and improving employability;</p> <p>ESF: 4.3.2 Promoting socio-economic integration of <u>third country nationals and of</u> marginalised communities such as the Roma;</p> <p>(...)</p> <p>ESF: 4.3.4 Enhancing the equal and timely access to quality, sustainable and affordable services; <u>modernising social protection systems, including promoting access to social protection;</u> improving accessibility, effectiveness and resilience of healthcare systems; <del>improving access to</del><u>and</u> long-term care services</p> <p>(...)</p>	
<p>Annex V - Template for programmes supported from the ERDF (Investment for Jobs and growth goal), ESF+, the Cohesion Fund and the EMFF – Article 16(3)</p> <p>2.1.1.2 Indicators [Table 3: Result indicators]</p> <p>(...)</p> <p>Section 4 Enabling conditions Reference: Article 19(3)(h)</p> <p>(...)</p>	<p>Annex V - Template for programmes supported from the ERDF (Investment for Jobs and growth goal), ESF+, the Cohesion Fund and the EMFF – Article 16(3)</p> <p>(...)</p> <p>Section 4 Enabling conditions Reference: Article <del>19</del><u>17</u>(3)(h)</p> <p>(...)</p>	<p>See also considerations 14) and 16)</p> <p>In addition, table 2.1.1.2 in Annex V to the proposed Regulation should include milestones for the result indicators, in line with the provisions of the ESF+ fund-specific Regulation Article 15(3) of draft ESF+ regulation.</p>
<p>Annex VII - Template for the transmission of data – Article 37 and 68(1)(g)</p>		<p>The Annex VII to the proposed Regulation should include clarification on what information shall be transmitted for the programmes supported by the ESF+, AMF, ISF and BMVI.</p> <p>The Annex VII, should also include information for “financing not linked to costs”, in line with requirement stemming from Article 125(3) of the Financial Regulation.</p>

Text in the proposal	Court's suggestion	Comments
Annex X Key requirements of management and control systems and their classification		See considerations 48)
Annex XIV - Template for the description of the management and control system – Article 63(9)		See considerations 48) and 49)
<p>Annex XV - Template for the management declaration – Article 68(1)(f)</p> <p>I/We, the undersigned (...) hereby declare that: (...)</p> <p>(b) the expenditure entered in the accounts complies with applicable law and was used for its intended purpose,</p> <p>I/We confirm that irregularities identified in the final audit and control reports in relation to the accounting year have been appropriately treated in the accounts, in particular to comply with Article 92 for submitting accounts providing assurance that irregularities are below the 2% materiality level.</p>	<p>Annex XV - Template for the management declaration – Article 68(1)(f)</p> <p>I/We, the undersigned (...) hereby declare that: (...)</p> <p>(b) the expenditure entered in the accounts complies with applicable law and was used for its intended purpose, <u>(c) the control systems put in place ensure the legality and regularity of the underlying transactions.</u></p> <p>I/We confirm that irregularities identified in the final audit and control reports in relation to the accounting year have been appropriately treated in the accounts, in particular to comply with Article 92 for submitting accounts providing assurance that irregularities are below the 2% materiality level.</p>	See paragraph 124
Provisions currently not included Proposal for a Reregulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, COM(2018) 375 final		
n/a		<p>The proposed Regulation should re-introduce in the CPR a mandatory independent appraisal and common mandatory appraisal standards, such as cost-benefit analysis, for selecting financially significant operations that represent the best value for money.</p> <p>See consideration 45)</p>
n/a		<p>The proposed Regulation should limit the EU contribution to revenue-generating projects to what is needed by introducing flat rates capping the total eligible expenditure for revenue-generating projects by sector based on the analysis of available evidence, or using financing instruments as the preferred option to co-finance revenue-generating projects.</p> <p>See consideration 46)</p>
<b>Proposal for a Regulation of the European Parliament and of the Council on the European Regional Development Fund and on the Cohesion Fund, COM(2018) 372 final</b>		
Article 7 Indicators	Article 7 Indicators	See considerations 24) and 27)
Article 7(1)	Article 7(1)	

Text in the proposal	Court's suggestion	Comments
Common output and result indicators, as set out in the Annex I with regard to the ERDF and to the Cohesion Fund, and, where necessary, programme-specific output and result indicators shall be used in accordance with point (a) of the second subparagraph of Article [12(1)], point (d)(ii) of Article [17(3)] and point (b) of Article [37(2)] of Regulation (EU) 2018/xxxx [new CPR]. (...)	Common output and result indicators, as set out in the Annex I with regard to the ERDF and to the Cohesion Fund, <del>and, where necessary, programme-specific output and result indicators</del> shall be used in accordance with point (a) of the second subparagraph of Article [12(1)], point (d)(ii) of Article [17(3)] and point (b) of Article [37(2)] of Regulation (EU) 2018/xxxx [new CPR]. (...)	
Annex I Common output and result indicators for the ERDF and the Cohesion Fund - Article 7(1)		See considerations 22), 23) and 24)
<b>Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+), COM(2018) 382 final</b>		
Article 2 Definitions		See consideration 22)
<p>Article 15 Indicators and reporting</p> <ol style="list-style-type: none"> <li>1. Programmes benefitting from the general support of the ESF+ strand under shared management shall use common output and result indicators, as set out in Annex 1 to this Regulation to monitor progress in implementation. The programmes may also use programme-specific indicators.</li> <li>2. The baseline for common and programme-specific output indicators shall be set at zero. Where relevant to the nature of the operations supported, cumulative quantified milestones and target values for those indicators shall be set in absolute numbers. The reported values for the output indicators shall be expressed in absolute numbers. (...)</li> </ol>	<ol style="list-style-type: none"> <li>1. Programmes benefitting from the general support of the ESF+ strand under shared management shall use common output and result indicators, as set out in Annex 1 to this Regulation to monitor progress in implementation. The programmes may also use programme-specific indicators.</li> <li>2. The baseline for common <del>and programme-specific output</del> indicators shall be set at zero. Where relevant to the nature of the operations supported, cumulative quantified milestones and target values for those indicators shall be set in absolute numbers. The reported values for the output indicators shall be expressed in absolute numbers. (...)</li> </ol>	See also considerations 24) and 27)
Annex I - III		See consideration 24)
<b>Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments, COM(2018) 374 final</b>		
<p>Article 33 Indicators for the European territorial cooperation goal (Interreg)</p> <ol style="list-style-type: none"> <li>1. Common output and common result indicators, as set out in Annex [I] to Regulation (EU) [new ERDF], and, where necessary, programme-specific output and result indicators shall be used in accordance with Article [12(1)] of</li> </ol>	<ol style="list-style-type: none"> <li>1. Common output and common result indicators, as set out in Annex [I] to Regulation (EU) [new ERDF], <del>and, where necessary, programme-specific output and result indicators</del> shall be used in accordance with Article [12(1)] of</li> </ol>	See consideration 27)

Text in the proposal	Court's suggestion	Comments
Regulation (EU) [new CPR], and point (d)(ii) of Article 17(3) and point (b) of Article 31(2) of this Regulation.	Regulation (EU) [new CPR], and point (d)(ii) of Article 17(3) and point (b) of Article 31(2) of this Regulation.	
Article 48 Audit of operations		See consideration 52)
<b>Proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Regulation (EU) No 508/2014 of the European Parliament and of the Council, COM(2018) 390 final</b>		
Annex I - Common indicators		The provisions should require the use of both 'output' and 'result' indicators. They should also specify the common indicators that Member States have to use for each area of support or type of operation and make its reporting mandatory
<b>Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund, COM(2018) 471 final</b>		
Annex VIII - Output and result indicators referred to in Article 28(3)		The provisions should require the use of both 'output' and 'result' indicators. They should also allow for mandatory reporting of all output and result indicators within a specific objective
<b>Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa, COM(2018) 473 final</b>		
Annex VIII - Output and result indicators referred to in Article 25(3)		The provisions should require the use of both 'output' and 'result' indicators. They should also allow for mandatory reporting of all output and result indicators within a specific objective
<b>Proposal for a Regulation of the European Parliament and of the Council establishing the Internal Security Fund, COM(2018) 472 final</b>		
Annex VIII - Output and result indicators referred to in Article 24(3)		The provisions should require the use of both 'output' and 'result' indicators. They should also allow for mandatory reporting of all output and result indicators within a specific objective