

Special Report

# Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments

(pursuant to Article 287(4), second subparagraph, TFEU)



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The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

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## **GLOSSARY AND ABBREVIATIONS**

The **Common Provisions Regulation (CPR)** is the Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.<sup>1</sup>

**Country-Specific Recommendations (CSR)** are Council recommendations to the Member States in relation to the structural challenges which it is appropriate to address through multiannual investments falling directly within the scope of the ESI funds as set out in the Fund-specific Regulations. They are based on the Commission's analysis of EU Member States' plans of budgetary, macroeconomic and structural reforms and concern the period of the next 12-18 months. They are adopted by the Council in accordance with Articles 121(2) and Article 148(4) of the Treaty on the Functioning of the European Union (TFEU).

**European Structural and Investment (ESI) funds** are five separate funds that support the delivery of the Union strategy for smart, sustainable and inclusive growth across the Union, as well as the fund-specific missions, with policy frameworks set for the seven-year MFF budgetary period. The funds include: European Regional Development Fund (ERDF); European Social Fund (ESF); Cohesion Fund (CF); European Agricultural Fund for Rural Development (EAFRD); and the European Maritime and Fisheries Fund (EMFF).

The **European Semester** is a cycle of policy coordination between the EU Member States which aims at an alignment of national budgetary, fiscal and economic policies with EU objectives and priorities. In the context of the European Semester the Council recommends Member States which structural reforms to implement and how to prevent excessive macroeconomic imbalances.

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<sup>1</sup> OJ L 347, 20.12.2013, p. 320.

**Ex-ante Conditionalities** are conditions, based on pre-defined criteria established in the CPR, which are regarded as necessary prerequisites for the effective and efficient use of the EU funding for all ESI funds. When preparing ERDF, CF and ESF OPs under the 2014-2020 programme period, Member States have to assess whether these conditions are fulfilled. If they have not been fulfilled, action plans needed to be prepared to ensure fulfilment of the conditions by 31 December 2016.

**Impact** refers to the longer term socio-economic consequences that can be observed after a certain period after the completion of an intervention, which may affect direct beneficiaries of the intervention or other indirect beneficiaries (e.g. decrease in unemployment levels, improvements in water quality, etc.).

**Inputs** are financial, human, material, organisational or regulatory means needed for the implementation of a policy, a programme or a project.

**Investment Priority** is a preferred area of European Union contribution, set at Union level and related to a specific Thematic Objective for ERDF, CF and ESF.

**Key Implementation Step (KIS)** refer to specific intermediate stages in the implementation of operations which are necessary to achieve the targets set for an investment priority for 2023. They can solely be used for the purposes of the performance framework and may refer to different stages of implementation that are necessary to deliver outputs, e.g. selection of projects or approval of major projects.

**Milestones** are intermediate targets, directly linked to the achievement of the specific objective for an investment priority. They are to be achieved by 31 December 2018 and will be assessed in 2019.

An **Operational Programme (OP)** sets out a Member State's or a region's priorities and specific objectives and how the funding (EU and national public and private co-financing) from the ESI funds will be used during a given period (currently 7 years) to finance projects. These projects must contribute to achieve a certain number of objectives specified at the level of the OP's priority axis. An OP is prepared by the Member State and has to be

approved by the Commission before any payments from the EU budget can be made. OPs can only be modified during the period covered if both parties agree.

**Outputs** are produced or accomplished with the resources allocated to an intervention (e.g. training courses delivered to unemployed young people, number of sewage plants or km of roads built, etc.).

**Partnership Agreements (PAs)** are entered into between the European Commission and each Member State for the 2014-2020 programme period. They set out the national authorities' plans on how to use funding from the European Structural and Investment Funds and outline each country's strategic goals and priorities for investment, linking them to the overall aims of the Europe 2020 strategy for smart, sustainable, and inclusive growth. They also include, inter alia a summary of the assessment of the fulfilment of applicable ex-ante conditionalities and if they are not fulfilled - of the actions to be taken, the bodies responsible and the timetable for implementation of those actions, as well as the description of methodology and mechanisms to ensure consistency in functioning of the performance frameworks. They are prepared by the Member State in a dialogue with the Commission and must be adopted by the Commission.

A **Performance Framework** consists of milestones and targets defined for a set of indicators chosen by the Member States for each priority axis within an operational programme except for the technical assistance priority axes and programmes supported under SME initiative.

The **Performance Reserve** accounts for 6 % of resources allocated to the ERDF, ESF and CF under the Investment for Growth and Jobs goal, as well as to the EAFRD, and to measures financed under shared management in accordance with the EMFF Regulation. These funds are included in the programmes, but will be definitively allocated or reallocated, subject to the outcome of the performance review in 2019.

The **Performance Review** examines the achievement of the milestones of the programmes at the level of priority axes, on the basis of the information and the assessments presented in the annual implementation report submitted by the Member States in the year 2019.

A **result** is a measurable consequence deriving – directly or indirectly – from a cause and effect relationship. The results-based approach to public policy relies on the principle that the focus of public interventions should be on the delivery of results, rather than on activity or process management. In Cohesion policy, the term result usually refers to outcomes and impacts.

**Targets** express the value of outputs, results to be accomplished and of expenditure certified to the Commission by 31 December 2023. Whether and to which extent these targets have been met will be assessed at the closure of the programme period in 2025.

A **Thematic Objective** is a structuring element of the Partnership Agreements. It is pre-determined by legislation and present objectives that should to be supported by European Structural and Investment Funds. Thematic objectives establish a link to EU level strategic objectives.



## **EXECUTIVE SUMMARY**

### ***About Ex-ante conditionalities and the Performance reserve as instruments to make more effective use of Cohesion spending***

I. The audit looks at two specific instruments introduced for the 2014-2020 programme period to make Cohesion spending more results oriented: ex-ante conditionalities and the performance reserve. While the former specifies certain conditions that must be fulfilled before the programme implementation is launched or at the latest by the end of 2016, the latter requires most ESIF programmes to set aside 6 % of the total funding to each Member State which will be definitively allocated or reallocated subject to the outcome of a performance review in 2019.

### ***How we conducted our audit***

II. We sought to determine whether ex-ante conditionalities and the performance framework and reserve were effectively used to incentivise better Cohesion spending by Member States during the 2014-2020 programme period. Our audit covered the period from December 2013 to February 2017.

III. This audit complements our previous Special Report 2/2017 dealing with the Commission's negotiation of partnership agreements and programmes.

### ***What we found***

IV. The ex-ante conditionalities are an innovation in Cohesion policy. Overall, we found that they provided a consistent framework for assessing the Member States' readiness to implement EU funds at the start of the 2014-2020 programme period. However, it is unclear to what extent this has effectively led to changes on the ground. The Commission has not made use of the possibility to suspend payments at programme adoption of unfulfilled ex-ante conditionalities. Around half of the more than 700 action plans adopted by Member States to fulfil all ex-ante conditionalities were not reported as completed by the end of 2016. These uncompleted action plans cover at most 27 % of the ERDF, CF, and ESF spending. After programme adoption the CPR does not provide for the Commission imposing any suspension of payments prior to the Member States' reporting on the completion of

actions to fulfil ex ante conditionalities in the annual implementation reports (by 30 June 2017) or progress reports (by 31 August 2017).

V. We also consider that the performance framework and reserve is unlikely to trigger a significant reallocation of Cohesion spending during the 2014-2020 period to better performing programmes. In particular any reallocation will be within and/or between the programmes of the same Member States. While 6 % of ERDF, CF and ESF funding has been set aside for the performance reserve, the way the performance reserve has been designed provides little incentive for a better result orientation of the OPs since it is mostly based on spending and outputs. Furthermore, the additional funding is definitively allocated even if milestones are not met in full by 2018 and can at most be reallocated within the Member State. The newly introduced suspensions and financial corrections for underperformance are a step in the right direction, but are subject to restrictive conditions and therefore unlikely to be applied in practice.

#### ***What we recommend***

VI. We do not believe that regulatory changes during the current 2014-2020 period in relation to either instrument would be cost-efficient. Nevertheless, we encourage the Member States to complete and the Commission to assess the agreed action plans and pursue the fulfilment of all ex-ante conditionalities. Moreover, the existing provisions regarding the performance reserve should be used as far as possible to avoid that money is wasted.

VII. Our recommendations, therefore, are for the post-2020 period, during which both instruments if maintained, should be reinforced so that they are more likely to contribute to a more effective use of Cohesion spending. Therefore when preparing its legislative proposal for the post-2020 period, the Commission should:

- Recommendation 1: further develop ex-ante conditionalities as an instrument to assess Member States' readiness to implement EU funds, and in particular

- (a) re-assess the relevance and usefulness of each of the ex-ante conditionalities for 2014-2020, eliminate overlaps and keep only those which can genuinely impact the effective achievement of policy objectives;
  - (b) ensure consistency of the ex-ante conditionalities for the post-2020 period with the European Semester;
  - (c) set clear assessment criteria with measurable targets wherever feasible to ensure a common understanding of what needs to be achieved; and
  - (d) require the fulfilment and application of ex-ante conditionalities throughout the programming period and follow it up taking into account the potential administrative burden.
- Recommendation 2: Consider turning the performance reserve for the post-2020 period into a more result-oriented instrument that allocates funds to those programmes that achieved good results , and in particular consider whether it should propose to
- (a) based on lessons learned further develop the performance reserve into an instrument better promoting and rewarding good performance where OPs need to demonstrate what they intend to achieve with the additional funding;
  - (b) make more use of immediate result indicators; and turn the key implementation steps into tools which better demonstrate actual performance of long term infrastructure interventions when assessing performance; and
  - (c) review the conditions for payment suspensions and financial corrections so that underperformance can be more easily addressed, at an earlier stage, with a view to further increasing the incentives to properly implement the funds.

## **INTRODUCTION**

### ***Performance-orientation is a key priority for the Commission during the 2014-2020 period***

1. The European Structural and Investment (ESI) funds account for less than 0.4 % of the European Union's GDP, but they have a significant impact on the economies of many Member States. The European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF) account for 349.4 billion euro in the 2014-2020 programme period and make up 75 % of the ESI funds. According to recent Commission data for the programme period 2007-2013, there are nine Member States where ERDF and CF spending corresponds to more than 30 % of all government capital expenditure. In four Member States (Hungary, Lithuania, Slovakia and Latvia) it even accounts for more than half of all public investments<sup>2</sup>. This is why making best use of these funds is so important.

2. During the 2014-2020 period, the Commission can use two specific instruments to incentivise better Cohesion spending by Member States and to make the release of EU funds subject to Member States meeting certain requirements in implementing the ESI funds:

- ex-ante conditionalities;
- a performance framework and performance reserve.

3. These two specific instruments are part of a broader range of measures aimed at reinforcing result orientation of Cohesion spending. The Common Provisions Regulation (CPR) for the 2014-2020 period (which sets out the rules for all ESI funds) also requires<sup>3</sup>:

- a concentration of funding on thematic objectives and investment priorities derived from the Europe 2020 strategy;

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<sup>2</sup> SWD(2016) 318 final, 19.9.2016 "Ex-post evaluation of the ERDF and Cohesion Fund 2007-13".

<sup>3</sup> Regulation (EU) No 1303/2013.

- a more structured use of intervention logic during the programming exercise, starting with identifying investment needs and the specifying the intended long-term results; and
- a more consistent and comprehensive use of performance indicators to measure progress towards reaching these results.

4. These three aspects were dealt with in our Special Report 2/2017 “The Commission's negotiation of 2014-2020 Partnership Agreements and programmes in Cohesion: spending more targeted on Europe 2020 priorities, but increasingly complex arrangements to measure performance”.

***Ex-ante conditionalities: setting minimum requirements at the beginning of the implementation of programmes***

5. The ex-ante conditionalities (EACs) require a Member State to achieve certain conditions prior to the implementation of the OPs<sup>4</sup>. ***Annex I*** provides the list of all 36 EACs. There are two types of EACs:

- seven general EACs. They aim at reinforcing the application and enforcement of the EU law (e.g. on public procurement, state aid, anti-discrimination). They are applicable to various sectors and policies in all EU Member States; and
- 29 thematic EACs. Overall, they were applicable around 2700 times in the different ERDF, CF and ESF OPs since they are related to selected investment priorities within the 11 thematic objectives of the 2014-2020 ESI funds<sup>5</sup>.

6. When preparing their Partnership Agreements (PAs) and their Operational Programmes (OPs) under the 2014-2020 programme period Member States had to assess whether any of the EACs were applicable to the specific objectives pursued within the investment priorities

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<sup>4</sup> Regulation (EU) No 1303/2013, Article 19.

<sup>5</sup> An overview of the 2014-2020 programme objectives for the ESI funds can be found in our Special Report 2/2017, Annex II.

of their OPs, based on a common set of criteria set out in the CPR<sup>6</sup>. Member States then had to determine whether these EACs are fulfilled. This self-assessment is documented in the PA and OPs which are submitted to the Commission for approval.

7. The Commission assesses the information provided by the Member States on the applicability and fulfilment of the EACs when negotiating the PAs and OPs, again based on the criteria laid down in the CPR<sup>7</sup>. In addition, the Commission has issued in March 2013 a set of guidelines on EACs for its staff conducting the negotiations of the PAs and OPs with the national authorities<sup>8</sup>. The final version of the guidance was available in February 2014.

8. For the EACs that remain unfulfilled at the date of submission of the PA, and/or the OPs to the Commission, the Member States are required to provide a list of actions to be taken, together with a timetable for the implementation of those actions and the bodies responsible (action plan). When adopting an OP the Commission may suspend all or part of interim payments to the relevant investment priorities of the OP pending the completion of these actions.

9. These action plans were due to be completed by 31 December 2016<sup>9</sup>. The Member States have to report on the status of their EAC not later than in their annual implementation report submitted by 30 June 2017<sup>10</sup> or in the progress reports due by 31 August 2017<sup>11</sup>. If a Member States fails to fulfil the EAC by 31 December 2016, the Commission can suspend interim payments to the priorities of the OP concerned<sup>12</sup>.

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<sup>6</sup> Regulation (EU) No 1303/2013, Annex XI, Part II.

<sup>7</sup> Regulation (EU) No 1303/2013, Article 19(3).

<sup>8</sup> European Commission, Internal Guidance on EACs for the ESI funds, Part I; and Guidance on for the European Structural and Investment Funds, Part II.

<sup>9</sup> Regulation (EU) No 1303/2013, Article 19.

<sup>10</sup> Regulation (EU) No 1303/2013, Article 111.

<sup>11</sup> Regulation (EU) No 1303/2013, Article 52.

<sup>12</sup> Regulation (EU) No 1303/2013, Article 19(5).

10. The scale and scope of the EACs, as defined in the CPR, had been subject to intense negotiations between the Commission, the European Parliament and the Council in the context of negotiation of the legislative package for the programme period 2014-2020. The negotiations started in July 2012 (on the Commission's legislative proposal of October 2011) and were completed in December 2013.

11. During the negotiations it was agreed that EACs should cover only issues strictly related to the implementation of the Cohesion Policy. Moreover, it was decided that Member States need to assess the applicability of EACs only if they receive EU contribution<sup>13</sup>.

12. An overview of the timeline for completing the EACs is provided in ***Figure 1***.

***Performance framework and performance reserve: allocation of part of the EU funds subject to outcome of performance review in 2019***

13. Member States also need to set aside part of the EU funding allocated to them in a performance reserve for the ESI funds. This reserve can be definitively allocated, and possibly reallocated, subject to the outcome of a performance review carried out in 2019 on the basis of indicators included in the performance framework.

14. The 2014-2020 performance reserve corresponds to 6 % of the ERDF, ESF and CF funds allocated to the Investment for Growth and Jobs goal and per category of region with certain exceptions<sup>14</sup>. This reserve may vary between 5 % and 7 % of allocation per individual priority axis within an OP. However, according to the CPR, there is no performance reserve for priority axes dedicated to:

- the Youth Employment Initiative (YEI) under the ESF<sup>15</sup>;

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<sup>13</sup> Regulation (EU) No 1303/2013, Art. 19(1).

<sup>14</sup> Regulation (EU) No 1303/2013, Articles 20 and 22.

<sup>15</sup> Further information on the Youth Employment Initiative (YEI) can be found in our Special Report No 5/2017 "Youth unemployment - have EU policies made a difference? An assessment of the Youth Guarantee and the Youth Employment Initiative" (<http://eca.europa.eu>).

- technical assistance; and
- for programmes dedicated to the SME initiative<sup>16</sup>.

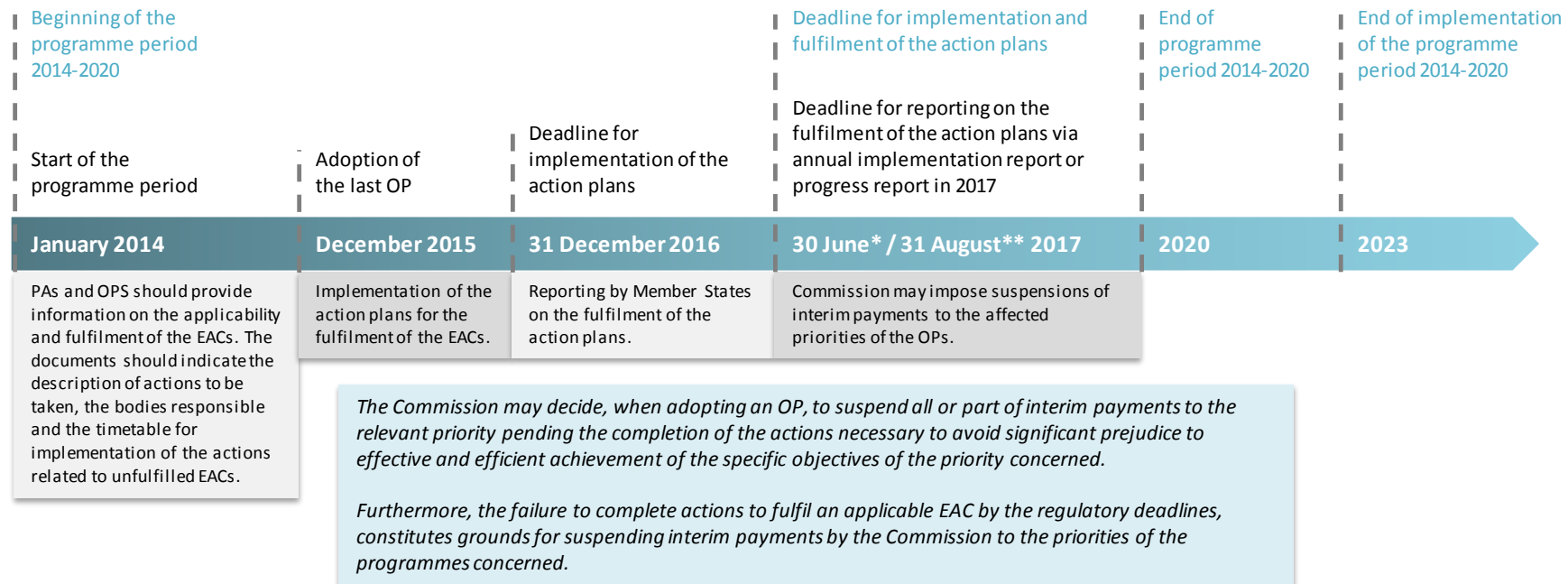
15. The European Territorial Cooperation (ETC) programmes are also not subject to a performance reserve.

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<sup>16</sup> Regulation (EU) No 1303/2013, Article 39.



**Figure 1 - Timeline for fulfilment of the ex-ante conditionalities in 2014-2020 programme period**



\* For the Member States with more than one operational programme per Fund.

\*\* For the Member States with no more than one operational programme per Fund.

Source: ECA based on the CPR provisions.

16. There are three types of performance indicators to monitor progress in programme implementation<sup>17</sup>:

- financial indicators to measure the absorption of the funds allocated to each priority axis;
- output indicators to measure the implementation of the actions foreseen under the investment priorities of the OPs; and
- result indicators to measure the achievement of the specific objectives of the OPs.

17. For each priority axis the OPs (except for technical assistance axes and OPs dedicated to the SME initiative) must specify a performance framework constituted by a subset of indicators already laid down in the OPs<sup>18</sup> and where necessary also key implementation steps (KIS). For each of the performance indicators and KIS included in the performance framework, the Member States need to establish milestones (to be achieved by December 2018) and targets (to be achieved by December 2023).

18. The OPs may set out key implementation steps (KIS) for each performance framework where no output and/or result indicators can be determined that can be measured by 2019<sup>19</sup>. KIS are for example the number of selected or approved projects, i.e. indicators that reflect that the programme implementation has started or is on-going.

19. In 2019, the performance reserve will be definitively allocated for the OPs and priorities which have achieved their milestones or completed their KIS. Where this is not the case, the reserve may be reallocated to other priorities of the same OP or to other OPs that have reached their milestones. The Commission may also suspend interim payments for a given priority if there has been a serious failure to achieve the agreed milestones due to clearly

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<sup>17</sup> Special Report No 2/2017, paragraphs 94 to 120.

<sup>18</sup> Regulation (EU) No 1303/2013, Articles 22 and 96, and Annex II.

<sup>19</sup> Regulation (EU) No 1303/2013, Annex II and Commission Implementing Regulation (EU) No 215/2014, Article 5.

identified implementation weaknesses. In a similar manner, the Commission may apply financial corrections for a given priority if there has been a serious failure to achieve the agreed targets by the end of 2023<sup>20</sup>. This can be done based on examination of the final implementation reports which will be submitted for ERDF, CF, and ESF programmes only in February 2025.

### **AUDIT SCOPE AND APPROACH**

20. Through this audit we examined whether the ex-ante conditionalities and the performance framework and reserve were used effectively to incentivise better Cohesion spending by Member States during the 2014-2020 programme period.

21. Our audit work for the present report comprised the following:

- a review of the regulatory provisions related to ex-ante conditionalities and the performance framework, including the performance reserve;
- an examination of the fulfilment status of ex-ante conditionalities and the corresponding action plans as of 31 December 2016 on the basis of the monitoring data of the Commission and Member States' supporting documentation;
- an in-depth analysis of five PAs and 14 ERDF and ESF OPs and complementary information on how Member States have carried out their self-assessment of the applicability and fulfilment of ex-ante conditionalities;
- an analysis of the performance framework, including the milestones and target setting for output indicators for these OPs, and how this will affect the conditions for the allocation of the performance reserve;
- interviews with more than 50 staff at the Directorates-General for Regional and Urban Policy and for Employment, Social Affairs and Inclusion and with more than 40 officials in the Member States and their permanent representations in Brussels; and

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<sup>20</sup> Regulation (EU) No 1303/2013, Article 22 and Commission Implementing Regulation (EU) No 215/2014 (OJ L 69, 8.3.2014, p. 65).

- consultations with experts in the field of regional, structural and cohesion policies of the European Union and performance budgeting, as well as national experts and representatives of permanent representations of Member States to the EU.

22. The 14 ERDF and ESF OPs examined relate to five Member States (Spain, Ireland, Croatia, Poland and Romania). We also carried out a study visit to Denmark covering two OPs. Our analysis is focused on the thematic objectives 1 “Strengthening research, technological development and innovation” (TO1) and 8 “Promoting sustainable and quality employment and supporting labour mobility” (TO8). These two thematic objectives were selected primarily since they account for the highest level of the financial allocation for the ERDF (TO1) and ESF (TO8) shared by all Member States.

23. We also took account of the Commission’s document on the value added of ex-ante conditionalities in the European Structural and Investment Funds<sup>21</sup>.

24. The period covered by this audit was from December 2013 to February 2017 when we obtained from the Commission the data on the ex-ante conditionalities fulfilment which were reported by the Member States as of February. In addition, we have taken into account the Commission’s information on the ex-ante conditionalities’ fulfilment reported by the Member States in their annual implementation reports and progress reports by 30 June and 31 August 2017 respectively as at mid-September 2017.

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<sup>21</sup> SWD(2017) 127 final, 31.3.2017.

## **OBSERVATIONS**

***Ex-ante conditionalities provided a consistent framework for assessing the Member States' readiness to implement Cohesion policy, but it is unclear to what extent this has effectively led to changes on the ground***

25. Ex-ante conditionalities should help to ensure that Member State can implement the ESI funds effectively by specifying a number of conditions that must be fulfilled at the latest by the end of 2016. This instrument also links Cohesion Policy more closely with the economic governance of the European Union.

26. We examined whether

- Member States considered ex-ante conditionalities to be fulfilled at the time of OP adoption and/or by the 31 December 2016 and how they had progressed in the implementation of the corresponding action plans;
- the Member States' self-assessment of ex-ante conditionalities was valid and the Commission's approach to non-compliance with ex-ante conditionalities was appropriate;
- the Commission's assessment of the ex-ante conditionalities was coordinated effectively with the European Semester and other information sources; and
- the regulatory provisions regarding a monitoring/evaluation of ex-ante conditionalities after 2016 allow for making good use of ex-ante conditionalities beyond 2016.

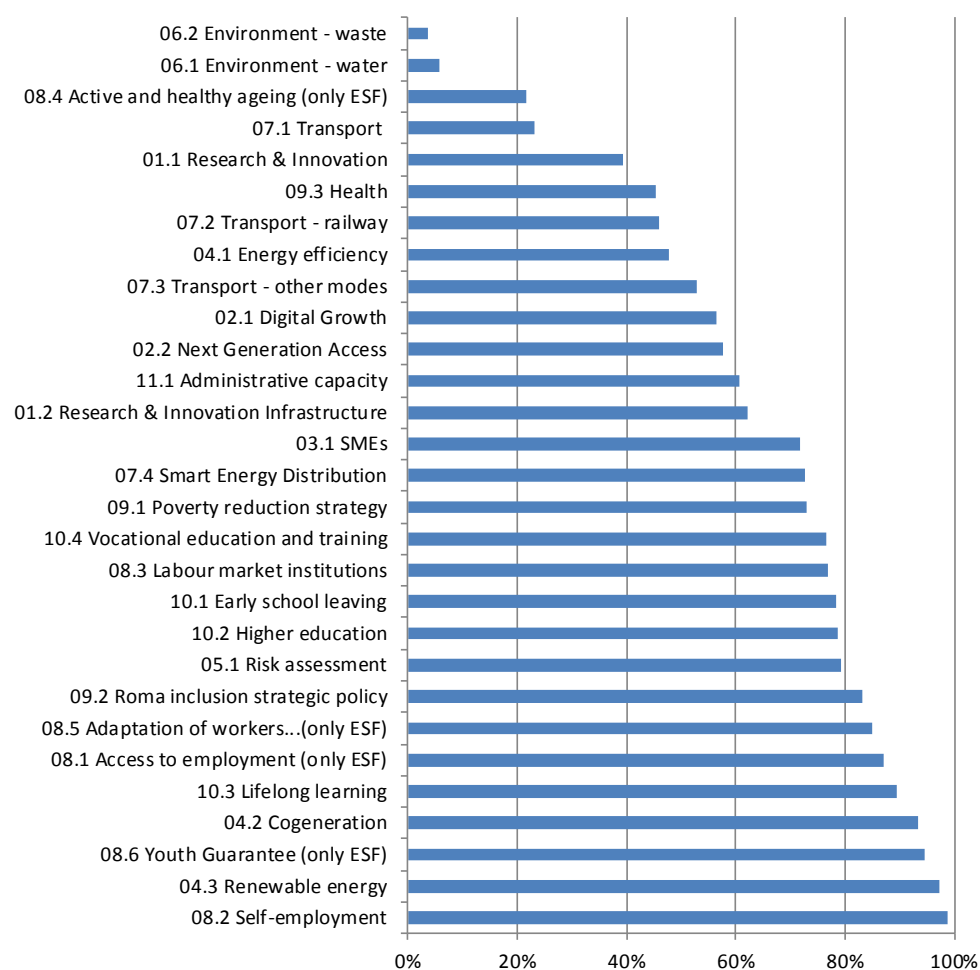
**Member States consider that almost two thirds of the thematic ex-ante conditionalities were fulfilled by the end of 2016**

27. Overall, the Commission's monitoring data shows that Member States considered that around 65 % of the thematic EACs were fulfilled at the time of the adoption of the OPs or at the latest by the 31 December 2016.

28. This situation differs significantly, however, between EACs. **Figure 2** shows that at the time of adoption 8 out of the 29 thematic EACs were fulfilled in less than half of the cases

and four in less than a quarter of them: EACs 6.1 on “Water sector: the existence of a water pricing policy” and 6.2 on “Waste sector: Promoting economically and environmentally sustainable investments in the waste sector”, EAC 8.4 on “active and healthy ageing” and EAC 7.1 on “Transport: existence of plans or framework for transport investment”.

**Figure 2 - EACs fulfilled at the time of the OP adoption**



Source: ECA based on the CPR provisions and the Commission’s data from Infoview, December 2016.

### **Limited progress in completing the action plans for unfulfilled ex-ante conditionalities by the end of 2016 but progress gained momentum towards the reporting deadlines**

29. As of February 2017, the Commission’s monitoring data showed that nearly half of the more than 700 action plans for unfulfilled EACs were not reported by Member States as completed by the end of 2016. By mid-September 2017, subsequent to receipt of Member

States annual implementation reports (AIR) and progress reports, according to the Commission, this fell to 58 actions plans for unfulfilled EACs.

30. The fulfilment of EACs proved to be demanding. Member States adopted three different types of action plans: nation-wide action plans (i.e. one horizontal action plan per ex ante conditionality for all OPs), programme specific action plans (i.e. action plans per OP) and mixed action plans combining the two approaches. In total, there were 761 action plans for all EU Member States under Cohesion policy.

31. The highest number of action plans related to general EAC 7 on “statistical systems and result indicators” (110 plans) and to the thematic EAC 1.1 on “national or regional smart specialisation strategy” (93 plans). For example EAC 1.1 was assessed as unfulfilled in 20 Member States and EAC 7 in 19 Member States.

32. Our analysis of the Commission’s monitoring data showed that, as of February 2017, 380 of these 761 action plans (50 %) had not been reported as completed by the end of 2016. The examination of the completion of action plans by 31 December 2016 reported in the Member States’ AIRs and progress reports by 30 June and 31 August 2017 respectively showed that 703 action plans had been completed; an increase from 50 % to 92 %.

#### Slowest progress for general EACs on public procurement and state aid

33. As of February 2017, the Commission’s monitoring data showed that all action plans have been assessed as completed by the Commission for only five thematic EACs and none of the general ones. These EACs represent 17 out of 761 of the action plans (less than 3 %): these concern the EACs 4.2 on “Actions to promote high-efficiency co-generation of heat and power” (one action plan), 4.3 on “Actions to promote production and distribution of renewable energy sources” (two action plans), 7.4 on “Development of smart energy distribution, storage and transmission systems” (three action plans), 8.2 on “Self-employment, entrepreneurship and business creation” (one action plan), and 9.1 on “Existence and implementation of a national strategic policy framework for poverty reduction” (10 action plans). By mid-September 2017 according to the Commission all action plans were completed for 16 thematic and 5 general EACs. These EACs cover 222 action plans or around 30 % of all action plans.

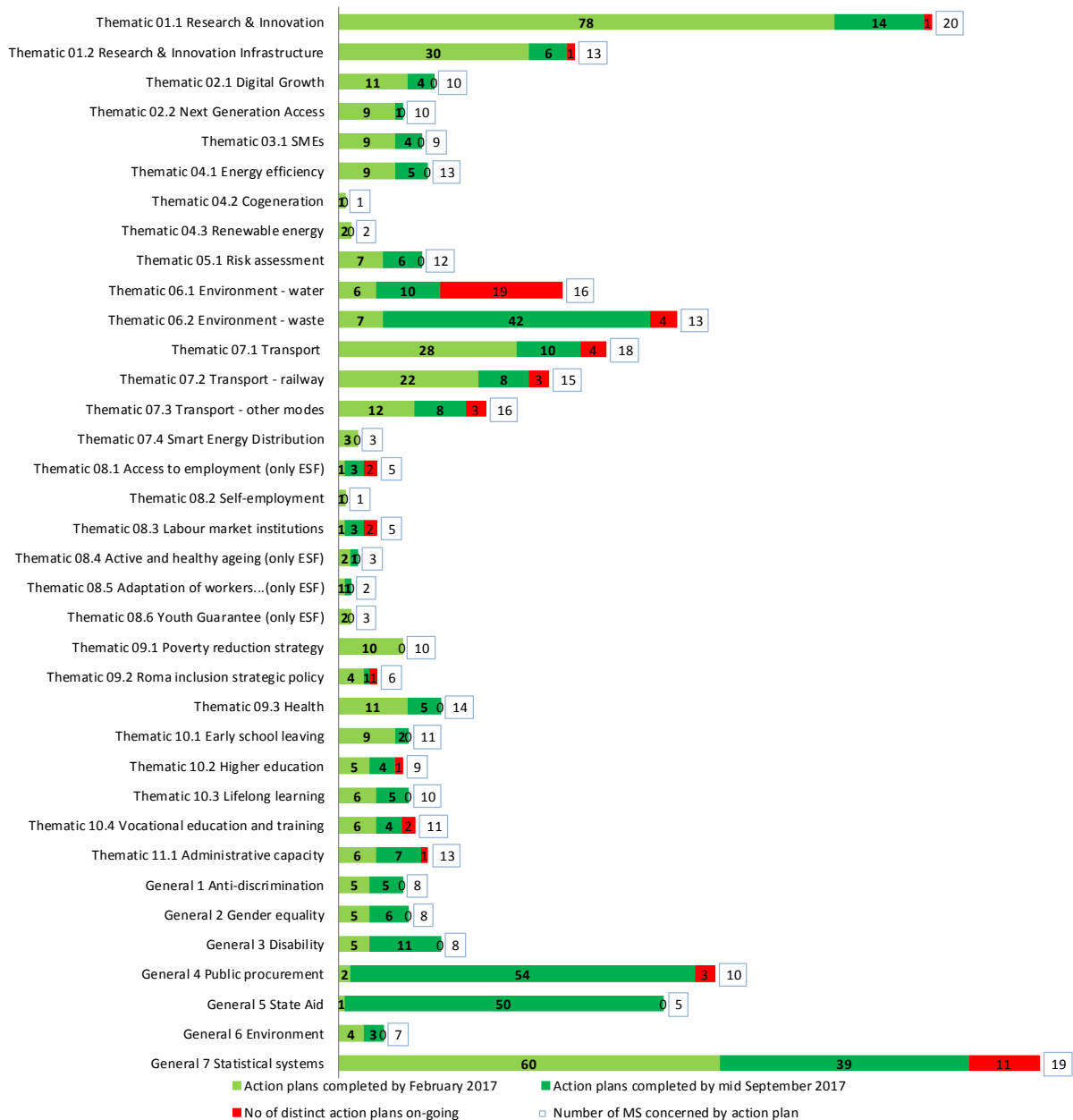
34. The slowest progress towards fulfilment of all the related action plans was made for the general EACs 4 on “Public procurement” (2 out of 57 action plans) and 5 on “State aid”( 1 out of 50 action plans). We recall that non-compliance with EU and national rules in public procurement and state aid are two of the main sources of irregularities in Cohesion policy<sup>22</sup>. Low completion rates were also noted for the thematic EACs 6.1 on “Water sector: the existence of a water pricing policy”, 6.2 on “Waste sector: Promoting economically and environmentally sustainable investments in the waste sector”, 8.1 on “Active labour market policies designed and delivered in the light of employment guidelines” and 8.3 on “Labour market institutions modernised and strengthened”. However, our analysis of the Commission’s monitoring data showed a significant increase in the action plans reported as fulfilled between February to mid-September 2017; from 381 to 703 out of 761 actions (92%) (see **Figure 3**).

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<sup>22</sup> More information on measures taken to reduce the level of irregularities in these areas can be found in Special Report No 10/2015 “Efforts to address problems with public procurement in EU cohesion expenditure should be intensified” and Special Report 24/2016 “More efforts needed to enforce compliance with and raise awareness of state aid rules in Cohesion policy ” (<http://eca.europa.eu>).



**Figure 3 - Number of action plans for unfulfilled EACs and their status at the time of the OP adoption and at 31 December 2016 as reported by Member States to the Commission as of mid-September 2017**



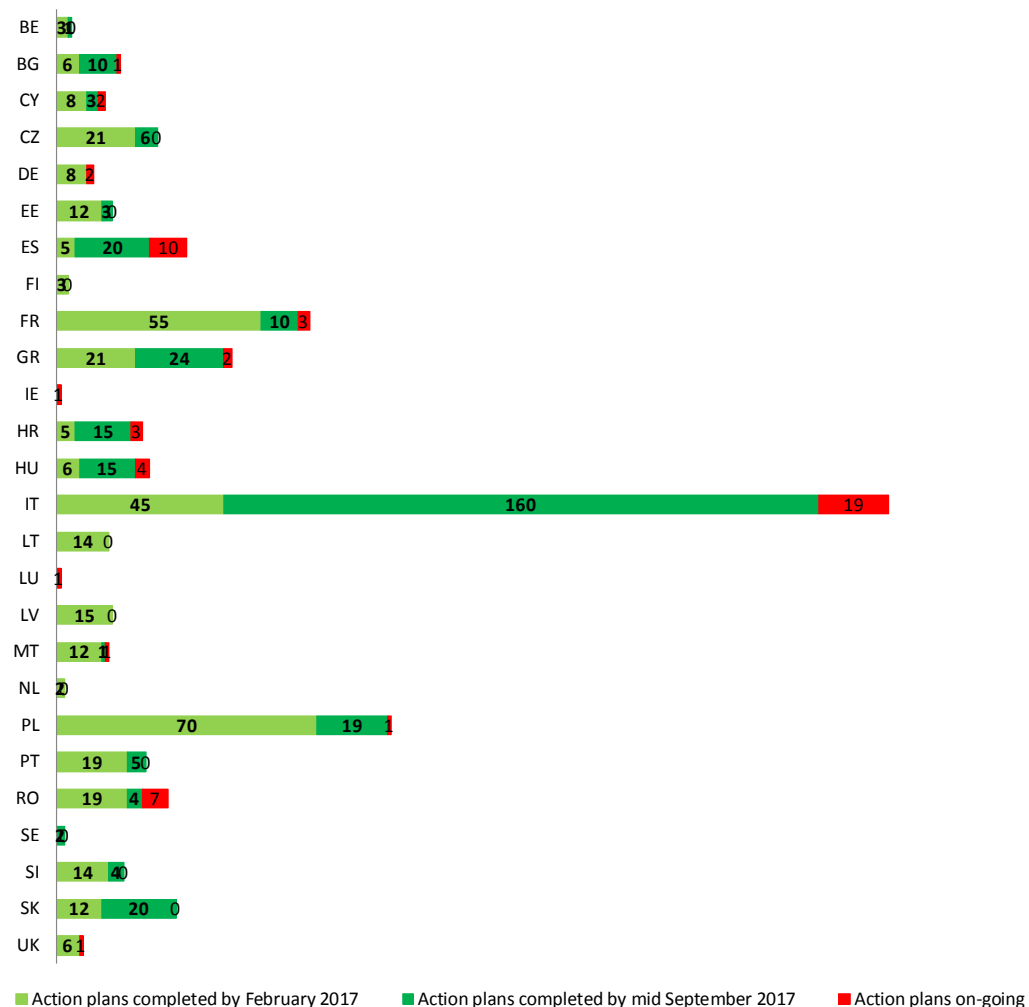
Source: ECA, based on the data provided by the DG REGIO and DG EMPL.

By February 2017 only three Member States reported all their action plans as completed which increased to 11 Member States by mid-September 2017

35. As of February 2017, based on the information received from Member States, the Commission assessed that only three Member States had completed all their action plans by

the end of 2016 (Latvia, Lithuania and Finland,). At the same time there were ten Member States (Bulgaria, Ireland, Greece, Spain, Croatia, Italy, Luxembourg, Hungary, Slovakia and Sweden) which reported as completed less than half of their action plans. However, as of mid-September 2017, according to the Commission 11 Member States (Belgium, Czech Republic, Estonia, Finland, Latvia, Lithuania, Netherlands, Portugal, Sweden Slovenia and Slovakia) had completed all their action plans (see **Figure 4**).

**Figure 4 - Number of fulfilled and unfulfilled action plans per Member State at 31 December 2016 as reported by Member States to the Commission as of mid-September 2017**



**Note:** Two Member States fulfilled all the EACs at the time of adoption of the OPs and therefore had not set up any action plans (AT and DK). The high number of action plans for Italy is partly due to the fact that for general EACs separate action plans were concluded at the level of the OPs, whereas the majority of the Member States addressed these aspects horizontally.

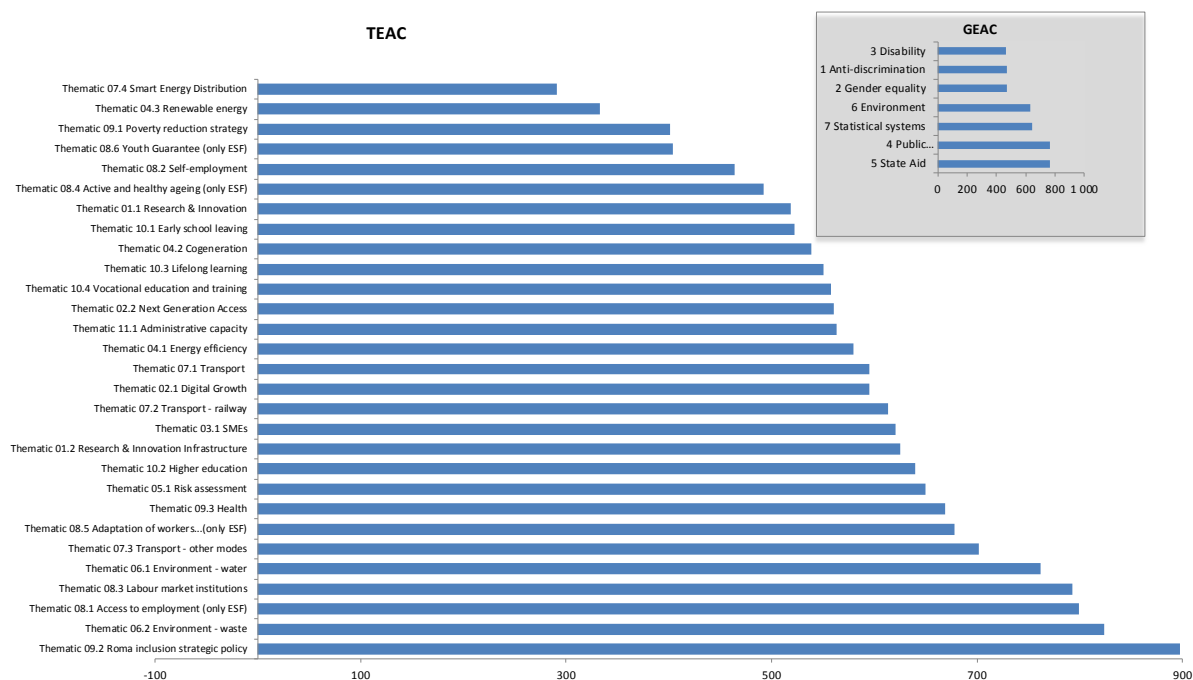
**Source:** ECA, based on the data provided by the DG REGIO and DG EMPL.

36. The average time taken by the Member States to implement the action plans and the Commission to complete the assessment was around 20 months (based on the 703 completed action plans as of mid-September 2017 according to the Commission's monitoring data). The duration varied considerably among the different thematic EACs and between thematic and general EACs (see **Figure 5**).

Around 27 % of the total ERDF, CF and ESF funding relates to thematic objectives for which the EACs were reported as not yet fulfilled by February 2017

37. The Commission was not in a position to provide data on the amount of funding affected by the action plans. Therefore, we estimated the amount of EU funds allocated to the investment priorities where EACs were not fulfilled, based on the financial information available per thematic objective (TO). Our estimation is that for at most 199.8 billion euro out of the 349.4 billion euro (57 %) of the total 2014-2020 EU budget for the ERDF, CF and ESF (including the YEI) action plans existed at the time of the adoption of the OPs. By February 2017 this share had come down to at most 27 %.

**Figure 5 - Average time taken (in days) by the Member States to fulfil and by the Commission to agree with the fulfilment of the EACs (for the completed action plans)**



Source: ECA, based on the data provided by the DG REGIO.

### **Overly positive and inconsistent self-assessment of ex-ante conditionalities by the Member States examined**

Member States perceived the ex-ante conditionalities as a useful tool for self-assessment, but the impact on the effectiveness of Cohesion spending is uncertain

38. Overall, the Member States examined perceived the EACs as a useful tool for self-assessment which helped to identify a number of shortcomings. In some cases, they were also seen as an impetus to the development of capacity for strategic planning in the country. The ex-ante conditionalities increased awareness of the Member States' strengths and weaknesses but their impact on the effective use of EU support will very much depend on the commitment and ownership taken by the Member States.

39. However, expectations regarding the possible impact of the EACs differed. In most cases Member State representatives did not consider that the fulfilment of an EAC would

automatically result in a more effective implementation of Cohesion policy and better results.

EAC assessment criteria are often of a generic nature and leave considerable room for interpretation to Member States

40. Our review of the criteria specified in the CPR to assess whether EACs are fulfilled shows that these are very often of a generic nature and thus leave considerable room for interpretation. In particular, they often do not refer to specific quantifiable targets even where such targets could have been derived from existing EU policy framework.

41. The Commission issued detailed guidance documents with additional sub-criteria describing its expectations for each criterion deriving from the CPR<sup>23</sup>. The use of this guidance was however optional for Member States since the CPR specified that only the criteria in the regulation can be applied for the assessment. Moreover, according to the CPR, the Commission also had to take care to respect national and regional competences when assessing the adequacy of policy measures<sup>24</sup>.

42. For example, the criteria defined in the CPR for the thematic EAC 3.1 on the “promotion of entrepreneurship” and EAC 8.2 on the “Self-employment, entrepreneurship and business creation” refers to measures to reduce time and cost in setting up a business and getting licences and permits. However, it does not require Member States to meet the corresponding targets set in the Small Business Act (SBA)<sup>25</sup> recommended by the Competitiveness Council in May 2011: setting-up businesses in three working days, costs to set-up business no more than 100 euro, time needed to get licences and permits no more than three months. Instead, the CPR suggests that these targets are taken into account, but

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<sup>23</sup> European Commission, Internal Guidance on EACs for the ESI funds, Part I, August 2014, and Guidance on EACs for the ESI funds, Part II, 13 February 2014.

<sup>24</sup> Regulation (EU) No 1303/2013, Article 19(3).

<sup>25</sup> [https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act\\_en](https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act_en)

not necessarily achieved. Our analysis shows that in the absence of specific targets, Member States generally applied their discretion to assessing whether the EACs were fulfilled.

43. According to the Commission, the average time to start-up a private limited company in the EU-28 Member States in 2016 was 3.3 days and the cost registering a start-up business was 320 euro. 16 out of 28 Member States do not meet the target related to the cost involved in setting up a business (less than 100 euro) and 7 Member States do not meet the target related to the time necessary to start up a business<sup>26</sup>.

44. Nevertheless, while 9 of the 24 Member States for which EAC 3.1 applied, adopted altogether 13 action plans in relation to this EAC, for 7 of these Member States the action plans were assessed as completed by February 2017 (see **Figure 3**). Moreover, Member States considered that the EAC was fulfilled in more than 70 % of the cases (see **Figure 2**).

45. We also note that the Commission had initially proposed such specific targets to be met for the EAC 3.1 on “Promotion of entrepreneurship” and EAC 8.2 ‘Self-employment’<sup>27</sup>. During the tri-partite negotiations on the legislative package, however, these targets were removed from the CPR. This resulted in a situation where the assessment of whether an EAC was fulfilled or not became essentially judgemental and the Commission had only limited means to challenge the Member States’ self-assessment.

#### Inconsistent assessment of the fulfilment of EACs by Member States

46. There were also cases where Member States had misinterpreted the CPR and, in other cases, inconsistently assessed the fulfilment of EACs. In these cases the Commission did not insist on a correct assessment.

47. For example, this was the case of EAC 8.1 on “Member States’ capacity to deliver personalised employment services and measures of active and preventive labour market

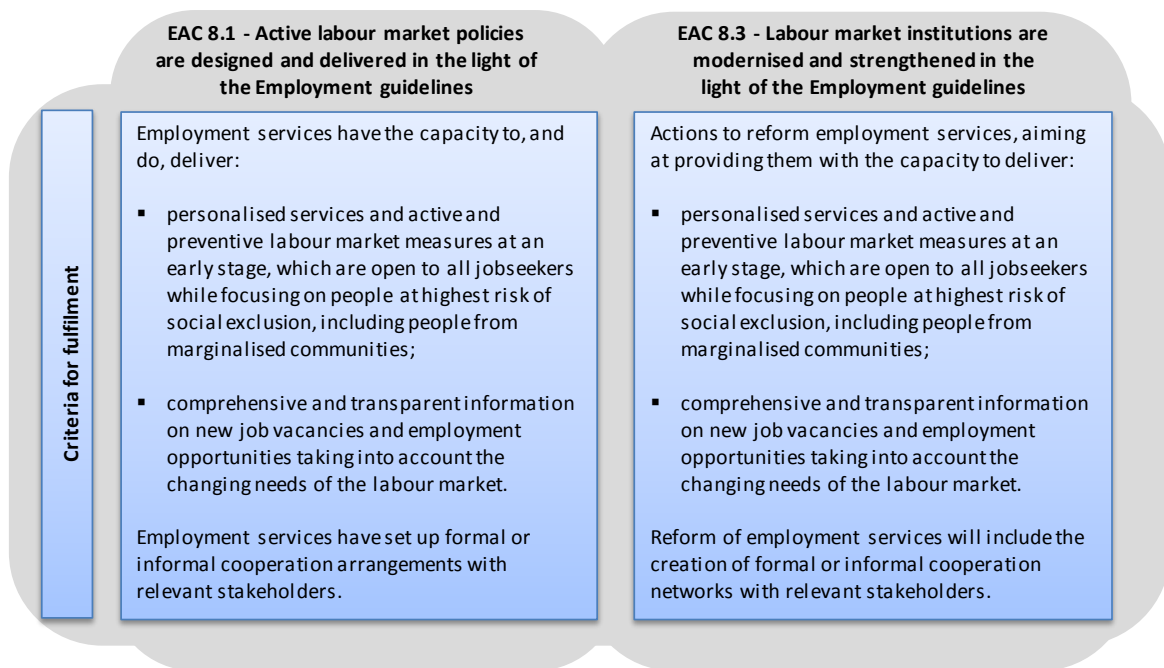
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<sup>26</sup> European Commission, DG Growth, “Progress report on start-up procedures in 2016” ([http://ec.europa.eu/growth/smes/promoting-entrepreneurship/advice-opportunities/start-up-procedures\\_en](http://ec.europa.eu/growth/smes/promoting-entrepreneurship/advice-opportunities/start-up-procedures_en)).

<sup>27</sup> COM(2011) 615 final of 6 October 2011, “Proposal for a CPR”.

policy” and EAC 8.3 on actions taken to put in place such services. The assessment criteria underpinning these two EACs are in fact mutually exclusive since EAC 8.3 represents an unfulfilled EAC 8.1 (see **Figure 6**).

**Figure 6 - Example of mutually exclusive assessment criteria - EACs 8.1 and 8.3 on employment policies**



Source: ECA on the basis of the Annex XI of the CPR.

48. Member States cannot, therefore, assess the criteria for EAC 8.1 on “Member States’ capacity to deliver personalised employment services and measures of active and preventive labour market policy” as fulfilled and at the same time take actions to develop capacities to deliver such services as required by EAC 8.3. Our analysis of 14 OPs showed however that OPs in two out of the five Member States examined (Poland and Croatia<sup>28</sup>) have assessed the criteria for EAC 8.1 as fulfilled and yet allocated EU funds to the modernisation of the employment services. In the case of the Polish OP we also found that the national authorities had assessed these two EACs jointly and concluded that both were fulfilled.

<sup>28</sup> Croatian national ESF OP ‘Efficient Human Resources’ and Polish ESF OP ‘Knowledge, Education and Growth’.

49. We also observed good practice where the Commission pro-actively provided support to Member States to develop the strategies required for fulfilling an EAC. **Box 1** provides such an example.

**Box 1 - Commission support in relation to the EAC 1.1 on “smart specialization strategies”**

Member States that have allocated funds to TO1 “Strengthening research, technological development and innovation” have to put in place a smart specialisation strategy (RIS3) on how to strengthen their national or regional competitive advantages and potential for excellence. The financial support under TO1 should be provided to promote research and innovation in smart specialisation areas with growth potential.

In several cases, these strategies were developed with the help of the Commission. For example, the Commission contracted experts to assess the national RIS3 of Ireland and Croatia and to develop the regional RIS3 of the Spanish regional OP of Andalucia. In addition the Commission encouraged Member States to participate in peer reviews. Poland, Romania and Ireland participated in the national peer review workshop held by the Commission’s Joint Research Centre and the Irish authorities in Dublin in July 2014. The Spanish research and innovation system was peer reviewed in August 2014 by the European Research and Innovation Area Committee.

The Commission also encouraged the involvement of external stakeholders in the development of the RIS3 and in the identification of geographical areas of specialisation. The Commission, furthermore, insisted on ensuring the strategies contained a sufficient level of interaction and cooperation between the managing authorities, companies and academia in identifying potential business opportunities and following them.

**Ex-ante conditionalities not sufficiently coordinated with European Semester and with information available from other Commission services**

50. The responsible DG, when assessing the EACs, should also take into account the knowledge generated in other contexts, such as the European Semester, or information gathered by other Directorates-General or through its own monitoring activities.



Commission's assessment of EACs not in line with analysis in European Semester country reports

51. In the framework of the European Semester, the Commission issues country reports and presents country specific recommendations per Member State. These country reports present an annual analysis of the economic and social challenges in all EU Member States.

52. The Commission did not, however, always take into account its knowledge on structural issues in the Member States, gathered in the context of the European Semester, when assessing the consistency and adequacy of the information provided by the Member State on the EACs. In August 2014, the Commission adopted internal guidance on the EACs for the ESI funds<sup>29</sup> This guideline did however not address how to ensure a consistent assessment of EACs and the European Semester.

53. Our analysis found for example three of the five Member States examined (Poland, Croatia and Spain) considered that the EAC 8.1 on “Member States’ capacity to deliver personalised employment services and measures of active and preventive labour market policy”<sup>30</sup> was fulfilled. The Commission accepted this assessment although its subsequent country reports indicated significant weaknesses related to these criteria (see **Box 2**).

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<sup>29</sup> European Commission, “Internal Guidance on EACs for the ESI funds”, part I, version 2.0, 29 August 2014.

<sup>30</sup> Regulation (EU) No 1303/2013, Annex XI, Ex ante conditionality 8.1, criteria: Employment services

**Box 2 - Inconsistencies between ex-ante conditionalities and country-specific reports in the assessment of Member State's delivery of active labour market policy – examples of Poland, Spain and Croatia**

For Poland, the country report for 2015 issued by the Commission identifies the persisting challenge that the Polish Public Employment Services (PES) do not adequately address labour market performance issues due to a lack of resources, inefficient functioning, weak monitoring, insufficient coordination of the fragmented system and a lack of skilled personnel<sup>31</sup>.

For Croatia, the country report for 2015 states that the Croatian Public Employment Service has a weak administrative capacity and that business processes hinder its capacity to improve the effectiveness of active labour market policies measures and enhance outreach to the groups most vulnerable on the labour market.

For Spain, the 2016 country report states that there is limited capacity for the PES to provide effective, individualised counselling and that no specific measures have been taken to increase assistance especially for those further away from the labour market<sup>32</sup>. The 2014 and 2015 country specific recommendations<sup>33</sup> had already previously stated that the Member State had made limited progress in accelerating the modernisation of PES and, in both years, the national authorities were recommended to take steps to increase the quality and effectiveness of job search assistance and counselling.

54. Moreover, in its Communication on the Annual Growth Survey 2017, the Commission noted that “the structural reforms remain incomplete in many Member States and delivery on the country-specific recommendations is too often patchy. The modernisation of products, services and labour markets remains to be a priority in many Member States”<sup>34</sup>.

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<sup>31</sup> SWD(2015) 40 of 26.2.2015.

<sup>32</sup> SWD(2016) 78 final of 26.2.2016.

<sup>33</sup> Council Recommendation (2015/C 272/13) of 14 July 2015 on the 2015 National Reform Programme of Spain and delivering a Council opinion on the 2015 Stability Programme of Spain (OJ C 272, 18.8.2015, p. 46).

<sup>34</sup> COM(2016) 725 final of 16.11.2016, p. 3.

Member States' self-assessments on the state aid compliance not consistent with DG Competition's regular monitoring

55. We established in another special report<sup>35</sup> that some Member States that fulfilled the general EAC 5 on “state aid” had a lower level of compliance with the state aid rules than those that had not fulfilled it. The Member States' self-assessment was, however, not contested by the Commission.

Commission did not challenge the Member States' self-assessments on the status of monitoring systems despite knowing about significant delays

56. The requirements for system of result indicators necessary to monitor the progress of OP towards results including data collection arrangements are set in the general EAC 7 on “statistical systems and result indicators” (see ***Annex I***). The CPR also requires that managing authorities establish a system to record and store data on each operation necessary for monitoring, evaluation, financial management, verification and audit including data relating to indicators and milestones<sup>36</sup>. The Commission interprets this requirement as pertaining to the existence of a computerised system<sup>37</sup>. We found that the Member States' assessment of the general EAC 7 is not consistently performed throughout the OPs namely on what concerns the need for a system to record and store data in computerised form to fulfil this general EAC (see **Box 3**).

**Box 3 – Ex ante conditionality GEAC 7 not fulfilled due to systems to record and store data not operational for Romanian OPs (GEAC 7)**

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<sup>35</sup> Special Report No 24/2016 “More efforts needed to raise awareness of and enforce compliance with State aid rules in cohesion policy”, paragraph 105 (<http://eca.europa.eu>).

<sup>36</sup> Regulation (EU) No 1303/2013, Article 125.2(d) and (e); Commission Delegated Regulation (EU) No 480/2014 of 3 of March 2014 supplementing Regulation (EU) No 1303/2013, Article 24 and Annex III (OJ L 138, 13.5.2014, p. 5).

<sup>37</sup> European Commission, “Guidance on Ex ante Conditionalities for the European Structural and Investment Funds”, part II, of 13 February 2014 and “FAQ on ex ante conditionalities relating to statistics ([http://ec.europa.eu/regional\\_policy/en/information/legislation/guidance/](http://ec.europa.eu/regional_policy/en/information/legislation/guidance/)).

The Romanian authorities considered that the general EAC 7 criterion of “arrangements for timely collection and aggregation of statistical data” was not in place at time of the adoption of the PA and OPs. The GEAC7 was therefore assessed as unfulfilled. The main reason for this was the inability of the IT system to comply with the requirements set by article 125 of the CPR, i.e., to record and store, in a computerized format, all the information on indicators required by the adopted regulations. Since then, the authorities report monthly to the Commission on the development of their IT system.

57. This general EAC is applicable to all Member States and all OPs. At time of their adoption, around one third of the OPs (126 out of 387) in 19 of the 28 Member States did not fulfil this condition. The Commission’s monitoring data showed that there were still around 20 % of all OPs not fulfilling this requirement by February 2017. By mid-September 2017, this general EAC remained unfulfilled for only 13 OPs.

58. Ten of the 14 OPs examined during our audit considered the EAC to be fulfilled and the remaining four considered it to be partially fulfilled. However, 12 out of these 14 OPs did not have a fully operational IT system related to indicators and milestones in place by the end of 2016. Without such an IT system, as required in article 125(2) (d) of the CPR, it is however not possible to monitor the implementation of an OP in a cost-efficient way.

59. These examples also show that fulfilment of an EAC is not necessarily equivalent to better performance on the ground and raises doubts as to whether the current approach in using ex-ante conditionalities will be effective in achieving better Cohesion spending.

### **The Commission did not suspend payments in the case of non-completion of action plans**

60. The CPR allows the Commission to suspend all or part of interim payments if Member States fail to complete actions to fulfil the applicable EACs.

61. The Commission has decided not to impose any suspensions of payments to the OPs, despite the fact that a large number of action plans had not been completed and many EACs had not been fulfilled. At the same time 13 Member States (Croatia, Cyprus, Czech Republic, France, Greece, Italy, Latvia, Malta, Poland, Portugal, Romania, Slovenia and Spain) have imposed self-suspensions related to selected investment priorities for 78 OPs.

62. We estimated the budget affected by these self-suspensions to be around 2.3 billion euro of ESF funding and around 4.7 billion euro of ERDF and CF funding. This corresponds to 2 % of the total EU funding for the 2014-2020 ERDF, CF and ESF, or 3.5 % of total EU funding initially covered by the action plans.

**No provision in the CPR as regards the enforcement or the monitoring/evaluation of ex-ante conditionalities after 2016**

63. For OPs where the EAC were not yet fulfilled by the end of 2016, further efforts have to be undertaken by the Member States to implement the action plans and by the Commission to guide, monitor and confirm the fulfilment of the EACs.

64. There are however no provisions in the CPR that Member States should monitor and report on the enforcement of EACs after 2016. There is also no responsibility given to the Commission in this regard. We also note that the Commission cannot impose any financial corrections for non-achievement of EACs. The impact of the EACs will therefore depend to a large extent on the ownership and commitment of the Member States in maintaining them and to continuing to work towards a fulfilment after 2016.

65. We also noted that the CPR does not require monitoring or evaluation of the impact of EACs on the effective implementation of Cohesion spending and achievement of better results.

***The performance reserve provides little incentive for a better result orientation of the OPs and is not likely to result in a significant reallocation of Cohesion spending to better performing programmes***

66. The performance framework and related performance reserve should provide an effective incentive to reach the intended outputs and results and, where necessary, enable a reallocation of EU funds so that a more effective use can be made of the available Cohesion spending.

67. We assessed whether

- the regulatory requirement to set aside a certain share of the EU funds in a performance reserve was met for the ERDF, CF and ESF (6 %) as a whole and for each of the 14 OPs examined (between 5 % and 7 % per priority axis);
- the conditions for a definitive allocation of the reserve in 2019 are sufficiently demanding and whether payment suspensions and financial corrections can be effectively used to sanction underperformance; and
- the performance indicators put in place to decide on the definitive allocation of the performance reserve are robust and, based on additional evidence requested from and provided by the competent national authorities, the milestone and target values for indicators included in the performance frameworks under TO 1 and TO 8 in 14 OPs examined meet the regulatory requirements.

#### **Regulatory 6 % target for the performance reserve for ERDF, CF and ESF met**

68. A performance reserve was established in 299 out of 391 OPs (76 %). Our analysis confirmed that Member States allocated around 20 billion euro out of a total EU funding of 335 billion euro in their OPs to these performance reserves for the 2014-2020 period.

69. This corresponds to 6 % of the total allocation to ERDF, CF and ESF under the investment for growth and jobs goal excluding the resources stipulated by the CPR<sup>38</sup>.

#### **Performance framework and reserve are mandatory and apply to most priority axes**

70. Compared with the previous programme periods, the mandatory performance reserve was reintroduced in the 2014-2020 programme period and must be applied to most priority axes (except for the technical assistance ones, the YEI and SME initiative programmes). Moreover, the mechanisms for its allocation are clear from the very beginning. The criteria, i.e. the indicators for its allocation have been defined upfront and are inferred from the

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<sup>38</sup> Regulation (EU) No 1303/2013, Article 20.

intervention logic in the programmes. This is a positive change. However, at the same time we noted that the indicators that determine the definitive allocation of the reserve remain to a large extent input and output oriented. This does not guarantee better results.

### **Performance framework remains focussed on spending and outputs**

71. Member States can demonstrate the progress in programme implementation through milestones and target values for three types of indicators: financial, output and result indicators. They can be complemented by key implementation steps (KIS) to measure projects that are on-going or planned to be started, but where it is unlikely that any outputs can be achieved by December 2018. Overall, these indicators must be representative of the actions under the priority axis. This has been defined as covering at least half of the financial allocation of the priority axis concerned<sup>39</sup>.

#### Hardly any result indicators in the performance framework

72. Overall, the 2014-2020 performance framework is however not significantly more results-oriented than similar arrangements in previous period<sup>40</sup>. In fact we found that the Commission even recommended not using result indicators for the ERDF/CF as they are to be achieved in the longer term and can be strongly influenced by external factors<sup>41</sup>. Also for ESF, although the ESF-result indicators reflect immediate outcomes of the projects, Member States hardly used result indicators in the performance framework.

73. OPs are required to have a performance framework for each priority axis broken down by category of region where applicable<sup>42</sup>. Therefore, we also analysed the reporting requirements for the indicators selected for each priority axis, where appropriate by

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<sup>39</sup> Commission Implementing Regulation (EU) No 215/2014, Article 5(1).

<sup>40</sup> Special Report No 20/2014, paragraphs 26 and 44 to 46; Annual Reports for the financial year 2013, chapter 10.

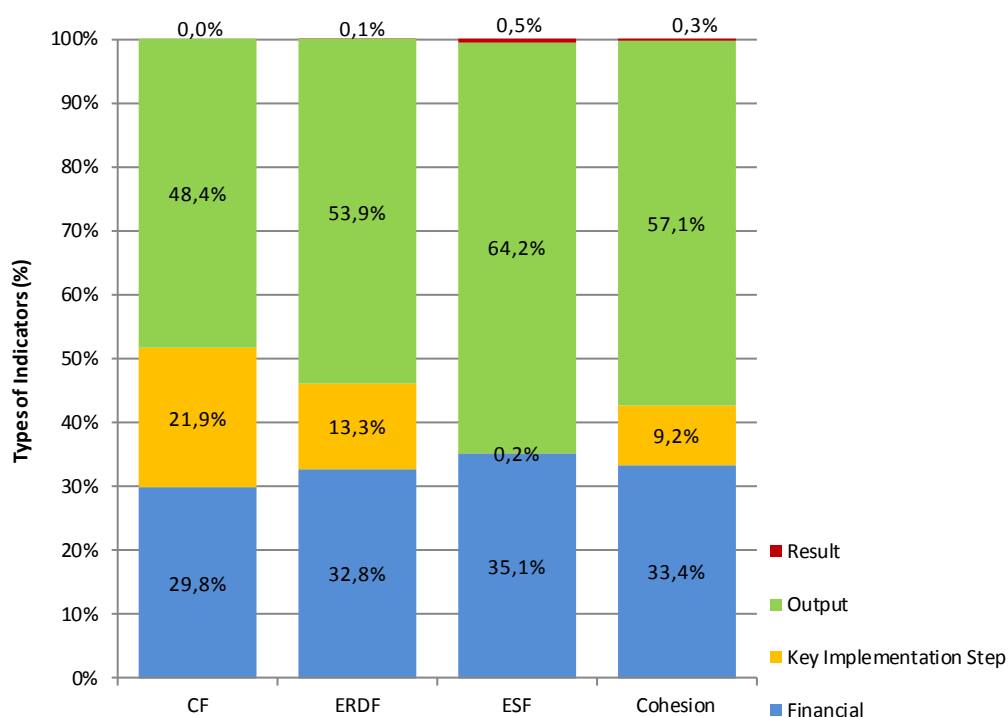
<sup>41</sup> European Commission, "Guidance fiche on performance framework review and reserve in 2014-2020", version 1, 9 April 2013, p. 5.

<sup>42</sup> Commission Implementing Regulation (EU) No 288/2014 of 25 February 2014 laying down rules pursuant to Regulation (EU) No 1303/2013, Annex I (OJ L 87, 22.3.2014, p. 1).

category of region, for all ERDF, CF and ESF OPs adopted for the programme period 2014-2020 to obtain an overview of the types of indicators and the related reporting requirements<sup>43</sup>. This analysis also excludes the indicators used in the performance frameworks not associated with the performance reserve.

74. **Figure 7** shows that the vast majority of the indicators used in the performance framework under the cohesion policy relate to output (57.1 %), key implementation steps (9.2 %) and financial indicators (33.4 %). Together they constitute 99.7 % of all reported indicators used in the performance frameworks of the different priority axes. The use of result indicators is marginal (0.3 %).

**Figure 7 - 2014-2020 performance framework of the ERDF, CF and ESF OPs: share of indicator type used per fund**



Source: ECA based on the data from the Commission's IT application Infview.

<sup>43</sup> Special Report No 2/2017, paragraphs 88 to 91.



KIS which measure the ability to start programme implementation are the main indicator for around one fifth of the EU funds

75. KIS are used only for ERDF and CF since, unlike in the case of ESF, output indicators measure fully implemented interventions<sup>44</sup>. KIS were defined in the programmes of 22 Member States and for approximately one fifth of all priority axes with performance framework. These KIS together with the financial indicators are the only indicators to give rise to the definitive allocation of around one fifth of the total EU funding subject to performance reserve. In those cases, the definitive allocation of the performance reserve will in essence reward the ability to start programme implementation, rather than the performance of the interventions itself.

76. This illustrates that the indicators included in the performance framework for the 2014-2020 period remain focussed on spending (financial indicator) and implementation (output indicators). For a large part of EU funding they even measure only whether programme implementation has been started, but provide no information on outputs or results (KIS). In our special report examining the Rural Development Programming for the period 2014-2020 we established that the performance reserve in the area of rural development is also focused on inputs<sup>45</sup>.

Milestone and target values are not in all cases substantiated.

77. We also examined the set-up of the performance framework for 35 priority axes of the 14 OPs covered. We found the milestones and targets for the performance indicators to be consistent with the nature and character of the specific objectives of the priority axis and, in the vast majority of cases, relevant and measuring a significant part of the actions developed under a given priority axis (i.e. representing more than half of the financial allocation of the priority axis).

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<sup>44</sup> Special Report No 2/2017, paragraphs 102 to 109 and table 4.

<sup>45</sup> Special Report No 16/2017, paragraphs 55 to 59.

78. Our findings are more mixed as regards the target values set. In general, managing authorities justified them by reference to past or existing interventions or, whenever empirical values were not available, on the basis of estimates.

79. For around one quarter of the indicators in the performance framework of the audited OPs (28 %) we were not able to conclude on the accuracy of the value, either because the calculation methodology could not be verified or because there was no detailed explanation on the unit costs or the assumptions made. We also consider that 18 % of the remaining milestones and target values are not realistic and/or achievable as they were either incorrectly calculated or considered to be underestimated (see [\*Annex III\*](#)). An example of unsubstantiated assumptions is presented in [\*Box 4\*](#).

**Box 4 - Example of values that could not be verified for the two Spanish OPs; ‘Smart Growth’ and ‘Andalucia ERDF’.**

For two Spanish ERDF OPs examined, the targets and milestones set for performance frameworks related to thematic objective 1 could not be confirmed. The Spanish authorities disclosed the methodology used to estimate the values, but did not provide data that would allow verification of the values set in the adopted OPs. A similar problem was raised in the respective OP ex-ante evaluation reports stating that more information would have been needed to validate the performance framework<sup>46</sup>.

80. Taken together this means that in around 46 % of the 128 examined cases doubts remain as to the milestones and/or targets specified for releasing the performance reserve are realistic and achievable (see [\*Annex III\*](#)).

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<sup>46</sup> Page 205 of the ex-ante evaluation report on the “smart Growth” OP and page 93 of the ex-ante evaluation report on the Andalucia ERDF OP.

**The performance reserve can be definitively allocated even if milestone values are not met in full by 2018**

81. The performance reserve can only be definitively allocated upon the achievement of the milestones specified in the OPs performance framework<sup>47</sup>. For all 14 OPs examined, there were at least two milestones specified.

82. We noted however that the performance reserve can also be definitively allocated even though milestone values are not fully achieved by December 2018. In case there are

- two indicators, milestones are considered achieved<sup>48</sup> if both indicators achieved at least 85 % of their milestone value; and
- more than two indicators, one of the indicators is allowed to achieve only 75 % of its milestone value, whereas the remaining ones need to achieve 85 %. This is the case for 60 % of the priority axis with performance frameworks.

**Performance review can at most result in a reallocation within the Member State**

83. If the indicators do not achieve these minimum milestone values, the performance review will result in a reallocation of the performance reserve to the priorities that achieved their milestone values and/or, in the case of a serious failure to reach the milestone values, it may lead to a suspension of payments.

84. **Annex IV** gives an overview of the detailed rules applicable to the assessment of milestones and targets.

85. Reallocation of the performance reserve is performed at national level: funds can be reallocated to priority axes within an OP or can be reallocated to priority axes of other OPs of the Member State. There is therefore no risk for a Member States to lose EU funding. In

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<sup>47</sup> Regulation (EU) No 1303/2013, Article 22(3).

<sup>48</sup> Commission Implementing Regulation (EU) No 215/2014, Article 6(2).

previous reports, we already stated that it is a challenge to obtain good qualitative results from schemes where funds are pre-allocated among Member States<sup>49</sup>.

86. Subject to the approval of the Commission, Member States also have the flexibility to decide how a reallocation will be performed: for example Poland stated in its PA that the performance reserve of around 5 billion euro will be reallocated based on a national competition between OPs (see **Box 5**).

**Box 5 - Reallocation of performance reserve funds – example of Poland’s competitive system**

If priorities do not achieve their milestones, the Polish performance reserve funds will be aggregated in a national pool of funds to be reallocated to performing priorities as long as they fulfil the following criteria: i) comply with the restrictions set out in the relevant EU regulations (e.g. thematic concentration requirements<sup>50</sup>) and ii) the increase allocation of funds is justified based on reports/evaluations concerning the implementation, changes to the socio-economic situation and administrative and absorption capacity. The reallocation of the funds is not restricted to priorities of the same OP, but can be done between priorities of different OPs, as long as the priorities fulfil the both sets of criteria. However, the possibility to leave the allocations for a given programme will be considered first.

**Suspensions and financial corrections for underperformance subject to restrictive conditions**

Payment suspensions during programme implementation

87. Suspensions can be imposed for cases of indicators included in the performance framework not achieving at least 65 % of their milestone values. Moreover, the underperformance must result from clearly identified implementation weaknesses. The

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<sup>49</sup> 2012 Annual Report, paragraph 10.4, 2014 Annual Report, paragraph 3.57.

<sup>50</sup> Special Report No 2/2017, Box 1.

suspension should be lifted as soon as the Member State has taken the necessary corrective action<sup>51</sup>.

88. The Member State, in addition, has the possibility to review the value set for the milestone if there is a significant change in the economic, environmental and labour market conditions in a Member State or region<sup>52</sup>. In a previous Special Report, we already found that Member States used this option during the 2007-2013 period to lower their target values towards the actual outcome shortly before closure<sup>53</sup>.

89. We also note that a failure to achieve milestones for result indicators cannot trigger a suspension of payments during programme implementation<sup>54</sup>.

#### Financial corrections at closure

90. At closure the Commission may also impose net financial corrections in case the indicators included in the performance framework have achieved less than 65 % of the target values set in the OPs for 2023. No financial correction can be imposed at closure, if the level of underperformance is above 65 %.

91. Financial corrections can also not be applied for underperformance related to the results or if the failure to achieve targets is due to a set of external factors defined in the CPR such as socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned or because of reasons of “force majeure”<sup>55</sup>. The external factors that are not specifically mentioned in the legislation should be analysed on a case-by-case basis and may lead to a reduction of up to 50 % in the level of

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<sup>51</sup> Regulation (EU) No 1303/2013, Article 142.1(f).

<sup>52</sup> Regulation (EU) No 1303/2013, Annex II.

<sup>53</sup> Special Report No 20/2014 “Has ERDF support to SMEs in the area of e-commerce been effective?”, paragraphs 23 to 25 (<http://eca.europa.eu>).

<sup>54</sup> Regulation (EU) No 1303/2013, preamble (22) and Article 22(6).

<sup>55</sup> Regulation (EU) No 1303/2013, preamble (22) and Article 22(7).

financial corrections<sup>56</sup>. To assess the level of impact of the external factors in question, evaluations will need to be performed.

92. Furthermore, the application of financial corrections should take into account the principle of proportionality and the OP's absorption level. For the former, the level of correction can be reduced, without a pre-defined limit, if the financial correction is considered disproportionate. For the latter, the legislation foresees that financial corrections will only be applied for priorities whose outputs achievement rate corresponds to less than two thirds of the target values. The level of the financial correction will be established based on the achievement/absorption coefficient (see **Annex IV**).

Regulatory conditions for corrective actions against underperformance are too restrictive

93. As already noted in a previous Special Report, during the 2014-2020 period, the Commission can for the first time impose payment suspensions and financial corrections for underperformance. We consider this to be a first step in the right direction<sup>57</sup>. However, the regulatory conditions for invoking these preventive and corrective actions are too restrictive. This makes it highly unlikely that the Commission will ever be in a position to impose a payment suspension or a financial correction for underperformance during the 2014-2020 period.

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<sup>56</sup> Commission Delegated Regulation (EU) No 480/2014, Article 3(3).

<sup>57</sup> Special Report No 4/2017 "Protecting the EU budget from irregular spending: The Commission made increasing use of preventive measures and financial corrections in Cohesion during the 2007-2013 period", paragraphs 134 to 135 (<http://eca.europa.eu>).

## **CONCLUSIONS AND RECOMMENDATIONS**

***Ex-ante conditionalities provided a consistent framework for assessing the Member States' readiness to implement Cohesion policy, but it is unclear to what extent this has effectively led to changes on the ground***

94. Ex-ante Conditionalities require a Member State to meet certain conditions before programme implementation is launched or at the latest by the end of 2016. This is a positive innovation in Cohesion policy.

95. Member States considered at the adoption of the OPs that almost two thirds (65 %) of the thematic ex-ante conditionalities are fulfilled. There were however significant differences between Member States and EACs. For example, 8 out of the 29 thematic EACs were fulfilled in less than half of the Member States and four in less than a quarter of them.

96. There was also slow progress in completing the action plans adopted by Member States for unfulfilled ex-ante conditionalities with 380 of the 761 action plans (50 %) not yet having been completed as of February 2017 based on Commission monitoring data. This decreased to 8 % according to the Commission's monitoring data following the receipt of the annual implementation reports and progress reports in respectively June and August 2017. Only three Member States had completed all their action plans (Finland, Latvia and Lithuania) as of February 2017. At the same time there were ten Member States (Bulgaria, Spain, Greece, Croatia, Hungary, Italy, Slovakia, Ireland, Sweden and Luxembourg) which had completed less than half of their action plans. The slowest progress towards fulfilment of all the related action plans was made for the ex-ante conditionalities addressing non-compliance with EU and national rules in public procurement and state aid which are two of the main sources for irregularities in Cohesion policy. On the positive side, we estimate that the share of Cohesion spending which is affected by non-fulfilled thematic ex-ante conditionalities had come down from at most 57 % to at most 27 % As of mid-September 2017, according to the Commission 11 Member States (Belgium, Czech Republic, Estonia, Finland, Latvia, Lithuania, Netherlands, Portugal, Sweden, Slovenia and Slovakia) had completed all their action plans.

97. The Commission, when assessing the ex-ante conditionalities, did not fully take account of the knowledge generated in other contexts, such as the European Semester, information

gathered by its Directorates-General or through its own monitoring activities. We found several examples of inconsistent assessments which may also indicate a lack of rigour when validating the Member States' self-assessment, which was often overly positive and inconsistent. Part of the problem is that the criteria specified in the CPR to assess whether ex-ante conditionalities are fulfilled are very often of a generic nature and thus leave considerable room for interpretation. In particular, they often do not refer to specific quantifiable targets even where such targets could have been derived from existing EU legislation.

98. The Commission did not suspend all or part of interim payments although some Member States failed to fulfil the applicable ex-ante conditionalities. 13 Member States imposed self-suspensions related to selected investment priorities for 78 OPs and corresponding to around 2.3 billion euro of ESF funding, and around 4.7 billion euro of ERDF and CF funding. At the same time, a large number of action plans had not been assessed as completed and many ex-ante conditionalities had not been fulfilled by February 2017. Member States needed to submit their progress and implementation reports on the status of ex-ante conditionalities by mid-2017. Based on these reports the Commission may impose suspensions of payments, but has not yet done so.

99. In general the visited Member States perceived the ex-ante conditionalities as a useful tool for self-assessment.

100. The ex-ante conditionalities capture however only the specific situation at the time of adoption of the OPs or, for those which were not considered to be fulfilled, at the latest by December 2016. The CPR does not require a follow-up of the status of ex-ante conditionalities after 2016. This will make it difficult for the Commission to assess whether they have actually made a difference on the ground when preparing the legislative proposal for the post-2020 programme period. The Commission also cannot impose any financial corrections for non-achievement of EACs. The effectiveness of the ex-ante conditionalities and their impact on the effective use of ESI funds throughout the programme period will depend on the commitment and ownership of Member States in maintaining and applying them.



***The performance reserve provides little incentive for a better result orientation of the OPs and is not likely to result in a significant reallocation of Cohesion spending to better performing programmes***

101. A performance reserve was established in 299 out of 391 OPs (76 %). Our analysis confirmed that Member States allocated around 20 billion euro out of a total EU funding of 335 billion euro in their OPs to these performance reserves for the 2014-2020 period. This corresponds to 6 % of the total allocation of ERDF, CF and ESF under the investment for growth and jobs goal excluding the resources stipulated by the CPR.

102. Compared with the previous programme periods the performance framework and reserve are mandatory and must be applied to most priority axes. Moreover the mechanisms for its allocation are clear from the very beginning and the criteria for its allocation are inferred from the intervention logic in the programmes and have been identified upfront. This is a positive change.

103. The performance reserve can only be definitively allocated upon the achievement of the milestones specified in the OPs performance framework. The values specified for each of these milestones do, however, not need to be fully achieved by 2018.

104. If milestones do not achieve these minimum values, the performance review can result in a reallocation of the performance reserve to the priority axes that achieved their milestone values for outputs, key implementation steps and financial indicators and/or, in case of a serious failure to reach the milestone values, a suspension of payments. A payment suspension during programme implementation can however not be triggered by a failure to achieve milestones for result indicators. Taken together these arrangements make that the performance reserve is not likely to result in a significant reallocation of cohesion spending to better performing programmes.

105. In any case a reallocation of the performance reserve is possible only at national level: funds can be reallocated to priorities within an OP or can be reallocated to priorities of other OPs of the same Member State. Member States therefore do not risk losing any EU funding as a result of the performance review in 2019.

106. The vast majority of the indicators constituting the basis for allocating the performance reserve relate to output (57.1 %), financial indicators (33.4 %) and key implementation steps (9.2 %) with the use of result indicators being marginal (0.3 %). This illustrates that the 2014-2020 performance framework remains essentially focussed on spending and project outputs, but not on achieving results.

107. Moreover, wherever Key Implementation Steps (KIS) are used in the performance framework, the definitive allocation of the performance reserve will in essence reward the ability to start implementation, rather than the performance of the interventions itself. They were used in around one fifth (22 %) of the EU funding subject to a performance reserve.

108. For around one quarter of the indicators included in the performance framework of the examined OPs (28 %) we were not able to conclude on the accuracy of the target value for the milestone, either because the calculation methodology could not be verified or because there was no detailed explanation of the unit costs or the assumptions made. We also consider that around 18 % of the remaining milestones and target values are not realistic and/or achievable or insufficiently ambitious. Taken together this means that in around 46 % of the cases doubts remain as to the milestones and/or targets specified for releasing the performance reserve.

109. Finally, during the 2014-2020 period, the Commission can for the first time impose payment suspensions and financial corrections for underperformance. We consider this to be a first step in the right direction. However, the regulatory conditions for invoking these corrective actions are too restrictive. This makes it highly unlikely that the Commission will ever be in a position to impose a payment suspension or a financial correction for underperformance during the 2014-2020 period.

### ***Our recommendations for the post-2020 period***

110. We do not believe that regulatory changes during the current 2014-2020 period in relation to either instrument would be cost-efficient. Nevertheless, we encourage the Member States to complete and the Commission to assess the agreed action plans and pursue the fulfilment of all ex-ante conditionalities. Moreover, the existing provisions

regarding the performance reserve should be used to avoid as far as possible that money is wasted.

111. Our recommendations, therefore, are for the post-2020 period, during which both instruments if maintained, should be reinforced so that they are more likely to contribute to a more effective use of Cohesion spending.

**Recommendation 1- Further develop ex-ante conditionalities for the post-2020 period**

For its legislative proposal for the post-2020 period, the Commission should further develop ex-ante conditionalities as an instrument to assess Member States' readiness to implement EU funds, and in particular:

- (a) re-assess the relevance and usefulness of each of the ex-ante conditionalities for 2014-2020, eliminate overlaps and keep only those which can genuinely impact the effective achievement of policy objectives.
- (b) ensure consistency of the ex-ante conditionalities for the post-2020 period with the European Semester;
- (c) set clear assessment criteria with measurable targets wherever feasible to ensure a common understanding of what needs to be achieved; and
- (d) require the fulfilment and application of ex-ante conditionalities throughout the programming period and follow this up taking into account the potential administrative burden.

Target implementation date: when preparing the legislative proposals for the post- 2020 period.

**Recommendation 2- Consider turning the performance reserve for the post-2020 period into a more results-oriented instrument**

For its legislative proposal for the post-2020 period, the Commission should develop the performance reserve into a more result-oriented instrument that allocates funds to those programmes that achieved good results, and in particular consider whether it should propose to

- (a) based on lessons learned further develop the performance reserve into an instrument better promoting and rewarding good performance where OPs need to demonstrate what they intend to achieve with the additional funding;
- (b) make more use of immediate result indicators and turn the key implementation steps into tools which better demonstrate actual performance of long term infrastructure interventions when assessing performance; and
- (c) review the conditions for payment suspensions and financial corrections so that underperformance can be more easily addressed, at an earlier stage, with a view to further increasing the incentives to properly implement the funds.

Target implementation date: when preparing the legislative proposals for the period post-2020.

This Report was adopted by Chamber II, headed by Ms Iliana IVANOVA, Member of the Court of Auditors, in Luxembourg at its meeting of 4 October 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

**ANNEX I****Thematic and general ex ante conditionalities**

Thematic objective	Thematic EAC	Strategic	Regulatory	Administrative/institutional capacity	Measures/instruments
TO 1 - Strengthening research, technological development and innovation	EAC 1.1. Research and innovation: The existence of a national or regional smart specialisation strategy in line with the National Reform Program, to leverage private research and innovation expenditure, which complies with the features of well-performing national or regional R&I systems.	X			
	EAC 1.2. Research and Innovation infrastructure. The existence of a multi- annual plan for budgeting and prioritisation of investments.	X			
TO 2 - Enhancing access to, and use and quality of, information and communication technologies (ICT) (Broadband target)	EAC 2.1. Digital growth: A strategic policy framework for digital growth to stimulate affordable, good quality and interoperable ICT-enabled private and public services and increase uptake by citizens, including vulnerable groups, businesses and public administrations including cross border initiatives.	X		X	
	EAC 2.2. Next Generation Network (NGN) Infrastructure: The existence of national or regional NGN Plans which take account of regional actions in order to reach the Union high-speed Internet access targets, focusing on areas where the market fails to provide an open infrastructure at an affordable cost and of a quality in line with the Union competition and State aid rules, and to provide accessible services to vulnerable groups.	X			
TO 3 - Enhancing the competitiveness of small and medium-sized enterprises (SMEs)	EAC 3.1. Specific actions have been carried out to underpin the promotion of entrepreneurship taking into account the Small Business Act (SBA).				X
TO 4 - Supporting the shift towards a low-carbon economy in all sectors	EAC 4.1. Actions have been carried out to promote cost-effective improvements of energy end use efficiency and cost-effective investment in energy efficiency when constructing or renovating buildings.		X		
	EAC 4.2. Actions have been carried out to promote high-efficiency co-generation of heat and power.		X		
	EAC 4.3. Actions have been carried out to promote the production and distribution of renewable energy sources.	X	X		
TO 5 - Promoting climate change adaptation, risk prevention and management	EAC 5.1. Risk prevention and risk management: the existence of national or regional risk assessments for disaster management. taking into account climate change adaptation	X			
TO 6. Preserving and protecting the environment and promoting resource efficiency	EAC 6.1. Water sector: The existence of (a) a water pricing policy which provides adequate incentives for users to use water resources efficiently and (b) an adequate contribution of the different water uses to the recovery of the costs of water services at a rate determined in the approved river basin management plan for investment supported by the programmes.	X	X		

Thematic objective	Thematic EAC	Strategic	Regulatory	Administrative/institutional capacity	Measures/instruments
	EAC 6.2. Waste sector: Promoting economically and environmentally sustainable investments in the waste sector particularly through the development of waste management plans consistent with Directive 2008/98/EC, and with the waste hierarchy.	X	X		
TO 7. Promoting sustainable transport and removing bottlenecks in key network infrastructures	EAC 7.1. Transport: The existence of a comprehensive plan or plans or framework or frameworks for transport investment in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks.	X		X	
	EAC 7.2. Railway: The existence within the comprehensive transport plan or plans or framework or frameworks of a specific section on railway development in accordance with the Member States' institutional set-up (including concerning public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. The investments cover mobile assets, interoperability and capacity- building.	X		X	
	EAC 7.3. Other modes of transport, including inland-waterways and maritime transport, ports, multimodal links and airport infrastructure: the existence within the comprehensive transport plan or plans or framework or frameworks of a specific section on inland-waterways and maritime transport, ports, multimodal links and airport infrastructure, which contribute to improving connectivity to the TEN-T comprehensive and core networks and to promoting sustainable regional and local mobility.	X		X	
	EAC 7.4 Development of smart energy distribution, storage and transmission systems.	X	X		
TO 8. Promoting sustainable and quality employment and supporting labour mobility	EAC 8.1. Active labour market policies are designed and delivered in the light of the Employment guidelines.			X	
	EAC 8.2. Self-employment, entrepreneurship and business creation: the existence of a strategic policy framework for inclusive start-up.	X			
	EAC 8.3. Labour market institutions are modernised and strengthened in the light of the Employment Guidelines.			X	
	EAC 8.4. Active and healthy ageing: Active ageing policies are designed in the light of the Employment Guidelines.				X
	EAC 8.5. Adaptation of workers, enterprises and entrepreneurs to change: The existence of policies aimed at favouring anticipation and good management of change and restructuring.				X
	EAC 8.6. The existence of a strategic policy framework for promoting youth employment including through the implementation of the Youth Guarantee.	X			
TO 9. Promoting social inclusion, combating poverty and any discrimination	EAC 9.1. The existence and the implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of people excluded from the labour market in the light of the Employment guidelines.	X			
	EAC 9.2. A national Roma inclusion strategic policy framework is in place.	X			

Thematic objective	Thematic EAC	Strategic	Regulatory	Administrative/institutional capacity	Measures/instruments
	EAC 9.3. Health: The existence of a national or regional strategic policy framework for health within the limits of Article 168 TFEU ensuring economic sustainability.	X			
TO 10. Investing in education, training and vocational training for skills and lifelong learning	EAC 10.1. Early school leaving: The existence of a strategic policy framework to reduce early school leaving (ESL) within the limits of Article 165 TFEU.	X			
	EAC 10.2. Higher education: the existence of a national or regional strategic policy framework for increasing tertiary education attainment, quality and efficiency within the limits of Article 165 TFEU.	X			
	EAC 10.3. Lifelong learning (LL): The existence of a national and/or regional strategic policy framework for lifelong learning within the limits of Article 165 TFEU.	X			
	EAC 10.4. The existence of a national or regional strategic policy framework for increasing the quality and efficiency of VET systems within the limits of Article 165 TFEU.	X			
TO 11. Enhancing institutional capacity of public authorities and stakeholders and efficient public administration	EAC 11. The existence of a strategic policy framework for reinforcing the Member States' administrative efficiency including public administration reform.	X		X	
<b>Areas of general EACs</b>					
1. Anti-discrimination					
2. Gender					
3. Disability					
4. Public procurement					
5. State aid					
6. Environmental legislation relating to Environmental Impact Assessment (EIA) and Strategic Environmental Assessment					
7. Statistical systems and result indicators					

Source: ECA based on the CPR and Commission's internal guidance on ex ante conditionalities for ESI funds.

**ANNEX II****Analysis of the three main types of technical ex-ante conditionalities***Strategic EACs*

1. The majority of the technical EACs (22 out of 29) concern the existence or adoption of a strategic framework, a strategy or a long-term plan. These EACs can have manifold purposes. For example, they are expected to provide for a better coordination of public interventions in the Member States and for synergies between the national and EU funding. They should also help to concentrate EU funds on the most important needs and thus avoid waste (see **Box**).

**Box – Examples of a strategic EAC**

The EAC 2.2 “Next Generation Network (NGN) Infrastructure: The existence of national or regional NGN Plans” supports the EU objective to provide all Europeans with higher speed internet. It requires Member States to put in place a plan for investment in broadband infrastructure based on a sound economic analysis. The plans should identify commercially-viable areas (e.g. more densely populated areas with higher demand) where investments should primarily come from private-sector investors and those with low profitability that would require public contributions, including those from ESI funds.

2. For 18 of these 22 EACs there are no explicit regulatory provisions setting out in detail how the strategies are to be defined, which entities should be responsible for their implementation and how they should be monitored (see **Annex I**). For the remaining four EACs, these aspects are set out in Directives and Regulations. The requirements for the strategies referred to in these EACs are specified in the CPR and they vary in scope.

3. The impact of the strategic EACs on Cohesion spending will depend on the quality of these long-term plans or strategies, their alignment with the OPs and the ownership and commitment of the Member States. A mechanical fulfilment and compliance with the criteria set for the corresponding EACs in the CPR will clearly not be sufficient to achieve better results.



### *Administrative and institutional capacity EACs*

4. The administrative and institutional capacity of a Member States' authorities is a key factor in ensuring an effective use of Cohesion spending. Seven of the 29 thematic EACs require measures to ensure or improve this capacity to implement the policy (mainly in the area of Information and Communication Technologies (TO2), Transport (TO7), Employment (TO8) and public administration in general (TO11)). We found the criteria specified in the CPR to assess the fulfilment of these EACs were ambiguous, which leaves a large degree of discretion to the Member States when carrying out their self-assessment.

### *Regulatory EACs*

5. Out of the 29 thematic EACs six are regulatory EACs. They mostly relate to the areas of renewable energy, energy efficiency and the water and waste sector:

- EAC 4.1 on "Promotion of investments in energy efficiency when constructing or renovating buildings" in relation to Directives 2006/32/EC, 2010/31/EU, 2012/27/EU;
- EAC 4.2 on "Promotion of efficient co-generation of heat and power" in relation to Directive 2004/8/EC;
- EAC 4.3 on "Promotion of the production and distribution of renewable energy sources" in relation to Directive 2009/28/EC;
- EAC 7.4 on "Development of smart energy distribution, storage and transmission systems") in relation to Directives 2009/72/EC and 2009/73/EC as well as Regulation (EC) No 714/2009, Regulation (EC) No 715/2009 and Regulation (EU) No 347/2013;
- EAC 6.1 on "Water sector: the existence of a water pricing policy in relation to Directive 2000/60/EC; and
- EAC 6.2 on "Waste sector: Promoting economically and environmentally sustainable investments in the waste sector in relation to Directive 2008/98/EC).

6. Our analysis showed that the regulatory EACs can be clearly linked to the transposition of Directives into national law. The criteria for the assessment of regulatory EACs are also

legally binding. These EACs, if adequately implemented, are therefore most likely to have a measurable impact on Cohesion spending as well as on the financial viability of the supported investments (see **Box**).

**Box - Examples of regulatory EACs**

EAC 4.1 requires Member States to “promote cost-effective improvements of energy and use efficiency and cost-effective investment in energy efficiency when constructing or renovating buildings”. These actions should incentivise market actors to purchase energy services and undertake energy efficiency improvement measures. These activities are supported by ESI-funds. Therefore, this EAC stimulates the demand for EU co-financed interventions.

EAC 6.1 requires a water pricing policy which (a) provides adequate incentives for users to use water resources efficiently and (b) an adequate contribution by the different water users to the recovery of the costs of water services<sup>1</sup>. The contribution in question should be taken into account when determining the funding gap, i.e. the difference between the total costs of the investment and the national contribution that can be co-financed by the EU. In other words, the EU will only co-finance the part of the investments that cannot be covered through the contributions of the users of water infrastructure<sup>2</sup>.

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<sup>1</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Article 9(1) (OJ L 327, 22.12.2000, p. 1).

<sup>2</sup> More information on EU-funded investments in water supply infrastructure can be found in our Special Report 12/2017 "Implementing the Drinking Water Directive: water quality and access to it improved in Bulgaria, Hungary and Romania thanks to significant EU-funded investments".

**ANNEX III****Consistency of the milestones and targets of the performance framework indicators with Annex II of the CPR (per priority axis)\*<sup>1</sup> for the 14 OPs examined regarding TO1 and TO8**

	Fund			Indicators		Total
	ERDF/ CF	ESF		Output and KIS	Financial	
Total number of milestones and targets per priority axis	60	68		81	47	128
of which compliant with the following requisites:						
(a.1) Realistic and achievable						
▪ Realistic and achievable	25 (42 %)	44 (65 %)		33 (41 %)	36 (77 %)	69 (54 %)
▪ Insufficient information to conclude	24 (40 %)	12 (18 %)		33 (41 %)	3 (6 %)	36 (28 %)
▪ Not realistic and/or not achievable	11 (18 %)	12 (18 %)		15 (19 %)	8 (17 %)	23 (18 %)
(a.2) Relevant and capturing essential information on the progress of a priority	60 (100 %)	68 (100 %)		81 (100 %)	47 (100 %)	128 (100 %)
(b) Consistent with the nature and character of the specific objectives of the priority	60 (100 %)	68 (100 %)		81 (100 %)	47 (100 %)	128 (100 %)
(c) Transparent, with objectively verifiable targets and the source data identified and, where possible, publicly available						
▪ Source data identified	60 (100 %)	68 (100 %)		81 (100 %)	47 (100 %)	128 (100 %)
▪ Objectively verifiable targets	36 (60 %)	56 (82 %)		48 (60 %)	44 (94 %)	92 (72 %)
(d) Verifiable, without imposing a disproportionate administrative burden	For all indicators in the sample the source of data is the statistical system developed by Member States. The administrative burden that the verification of milestones and targets could involve is, therefore, directly related to the design of those systems whose procedures have not been analysed.					
(e) Consistent across programmes, where appropriate	For the output indicators and KIS, this could only be confirmed for one indicator, in all other cases different indicators were used. We note, nevertheless, that the milestones and target were only split per gender in two of the six OPs examined with ESF co-financing. The legal basis leaves it up to the Member States to break down the milestones by gender <sup>2</sup> .					

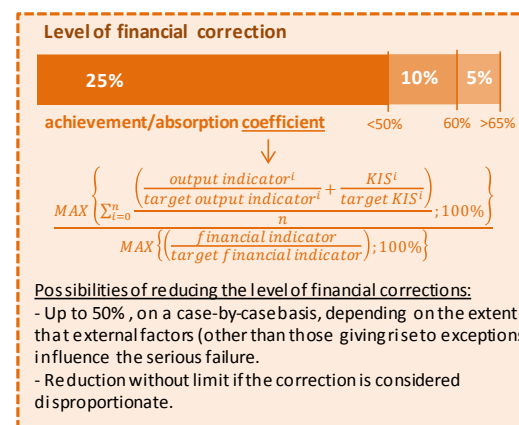
Source: ECA based on the OPs and complementary information provided by the Member States.

<sup>1</sup> The numbers presented correspond to the number of times an indicator is used in the performance framework, i.e. they are counted per priority axis.

<sup>2</sup> Commission Implementing Regulation (EU) No 288/2014, Annex I, table 6.

## Rules applicable to assessing the achievement of milestones and targets

End 2023	Serious failure to achieve target		Target achieved
	Achievement of targets		
	Potential Financial Correction (25%, 10%, 5% depending on the absorption coefficient, with exceptions)	No corrective or incentive mechanism	
	<u>Conditions for corrections:</u> <ul style="list-style-type: none"> <li>- The failure is due to clearly identified implementation weaknesses, which the Commission had previously communicated following close consultations with the Member State concerned;</li> <li>- and that Member State has failed to take the necessary corrective action to address such weaknesses (such as a reallocation of the reserve to priorities that achieved its milestones).</li> </ul> <u>Exceptions due to external factors:</u> <ul style="list-style-type: none"> <li>- The failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned;</li> <li>- the failure is due to reasons of force majeure seriously affecting implementation of the priorities concerned.</li> </ul>		
End 2018	Serious failure to achieve milestone		Milestone achieved
	Achievement of Milestones		
	Potential Suspension	Reallocation of performance reserve	Performance reserve
	<u>Conditions for suspensions:</u> <ul style="list-style-type: none"> <li>- The failure is due to clearly identified implementation weaknesses, which the Commission had previously communicated following close consultations with the Member State concerned;</li> <li>- and that Member State has failed to take the necessary corrective action to address such weaknesses (such as a reallocation of the reserve to priorities that achieved its milestones).</li> </ul>	Reallocation possible to priorities that have achieved their milestones	
2014			Achievement rate
		65% <sup>(1)</sup>	85% <sup>(2)</sup> 100%



### NOTES:

(1) Failure to achieve at least 65 % of the milestone/ target value for one (for performance frameworks with two indicators) or at least two indicators (for performance frameworks with more than two indicators).

(2) At least 85% of the milestone/target is achieved for all indicators (except for one, which can achieve 75% in case the performance framework has three or more indicators).

Source: ECA based on a review of the Commission Implementing Regulation (EU) No 215/2014 and the Commission Delegated Regulation (EU) No 480/2014.

## **REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS**

### **"EX-ANTE CONDITIONALITIES AND PERFORMANCE RESERVE IN COHESION: INNOVATIVE BUT NOT YET EFFECTIVE INSTRUMENTS"**

#### **EXECUTIVE SUMMARY**

IV. In relation to the changes on the ground caused by ex ante conditionalities, the mere fact of imposing minimum conditions which had not existed in any of the former cohesion policy frameworks, should improve effectiveness and efficiency of spending.

The Commission will be able to assess the final impact of ex ante conditionalities after the projects / programmes are implemented.

In line with the CPR, the Commission may suspend payments for the non-completion of the action plan to fulfil ex ante conditionalities following the reporting by Member States on their fulfilment in the annual implementation reports (by 30 June 2017) or progress reports (by 30 August 2017).

The Commission is planning to complete its assessment in autumn 2017. In mid-September the budget affected by the non-completed action plans was about 12% of the Cohesion funding.

V. The performance framework and performance reserve were established to support the focus on performance and the attainment of the objectives of the Union's strategy for smart, sustainable and inclusive growth. They were not designed to result in significant reallocation of Cohesion spending. Nonetheless, if programmes fail to achieve the milestones set in the performance framework, the performance reserve may be reallocated to other, better performing programmes. Moreover, the performance framework is just one of several elements of the result orientation. The majority of indicators used for the allocation of the performance reserve are output indicators, because it would be unfair to reward or penalise the programme for results influenced by external factors which are beyond the control of the programme's managing authority. However, if the intervention logic of the programme is well designed, the delivery of specified outputs should contribute to the attainment of objectives in terms of results.

VI. The Commission is currently analysing the reports on the completion of the action plans to fulfil ex ante conditionalities, submitted by the Member States in the framework of annual implementation reports and progress reports.

The regulatory provisions on performance review and reallocation of the performance reserve are precisely designed to contribute to performance and hence prevent wasteful or ineffective use of resources.

VII. At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

Recommendation 1: At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

(a) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance..

(b) Under the condition that ex ante conditionalities are maintained for post-2020 and taking into account the specificities of each process, the Commission partially accepts this recommendation. However, it will strive towards ensuring consistency.

(c) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance.

(d) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance.

Recommendation 2: At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

Under the condition that the performance framework and reserve are maintained for post-2020, the Commission accepts the recommendation.

(c) The Commission underlines that its main objective is to help the Member States to properly implement the Funds and, therefore, to avoid underperformance. The Commission will continue to put efforts to further achieve this objective, i.e. by providing guidance, technical expertise, possibilities to discuss and exchange experience, etc.

Payment suspensions and financial corrections are actions to be undertaken only when all other efforts have failed. The Commission will review and will continue to use these actions also in the future, but focusing its efforts in doing preventive actions as far as possible.

## **INTRODUCTION**

18. A key implementation step is an important stage in the implementation of operations under a priority, which is necessary to achieve targets set for 2023. Its completion is verifiable and may be expressed by a number or percentage.

## **OBSERVATIONS**

29. Member States could report on the fulfilment of EACs till June 2017 in the framework of the annual implementation reports and till August 2017 in the framework of the progress reports.

The Commission is finalising its assessment of the remaining action plans in autumn 2017.

32. The Commission recalls that there is no legal obligation for Member States to report prior to June/August 2017.

34. It is important to underline that for general EAC 4 and 5 and for EAC 8.1 and 8.3 the majority of EAC were considered as fulfilled at the time of PA/OP adoption:

- 15 out of 27 Member States who considered EAC 4 as applicable had considered it as fulfilled at adoption;
- 22 out of 27 Member States who considered EAC 5 as applicable had considered it as fulfilled at adoption;
- 22 out of 27 Member States who considered EAC 8.1 as applicable had considered it as fulfilled at adoption and;
- 9 out of 14 Member States who considered EAC 8.3 as applicable had considered it as fulfilled at adoption.

The Commission services analysed the Member States' self-assessments. They were discussed with Member States.

35. See Commission reply to paragraph 32.

37. Every thematic ex-ante conditionality is linked to a specific investment priority within the Thematic Objective. Not every investment priority has its own ex-ante conditionality.

Once the Commission has finished its assessment, it will be in a position to provide a comprehensive analysis of the share of Funds covered by the not completed action plans.

39. As mentioned by the Commission under the paragraph 59 below, ex ante conditionalities have introduced minimum requirements and conditions which did not exist in any of the former cohesion

policy legislative frameworks. Although the impact of ex ante conditionalities can be assessed only at the end of the programme period, the Commission expects that the mere fact of imposing minimum conditions should improve the effectiveness and efficiency of spending. However, this does not mean that the conditions could not have been more demanding and ambitious – as it was proposed by the Commission (COM(2011)615).

41. The Commission underlines that the guidance is an internal document for its staff on how to interpret each criterion deriving from the CPR in order to ensure consistency in assessment of the ex-ante conditionalities across Member States. The analysis by the Commission services of the Member State's self-assessments was carried out in accordance with the Commission guidance which significantly reduced the room for interpretation.

47. The Commission considers that the mentioned criteria for two different ex ante conditionalities which are linked to two different investment priorities (one that supports the delivery of active labour market policies (ALMPs) meeting certain minimum conditions and the other investment priority that supports reforms with a view to deliver these ALMPs), are not mutually exclusive. This could only be the case if any further improvement of ALMPs meeting the minimum conditions defined by EAC 8.1 is impossible and should not be supported by the Union.

48. The Commission is of the opinion that Member States can assess the criteria for EAC 8.1 as fulfilled and use the EU funding under the investment priority related to EAC 8.3 to further develop capacities to deliver such services for the following reasons:

- a Member State may fulfil EAC 8.1 via the investments and reform measures undertaken under the investment priority to which EAC 8.3 applies.

- a Member State which already meets the minimum conditions of EAC 8.1 may still want to improve the functioning of its public employment service by investing in the investment priority on the reform of labour market institutions, for instance to follow up on observations made in the country report. The fact that a Member State meets minimum conditions cannot prevent this Member State to further improve its labour market institutions and the Commission services may even point to the need to do better.

52. The Commission uses its knowledge generated in other areas or in co-ordinated exercises like the European Semester for its daily work of preparation and implementation of programmes.

The assessment of fulfilment by the Member State and the Commission is limited to the criteria established in Annex XI CPR, i.e. ex-ante conditionalities should cover only issues strictly related to the implementation of the Cohesion Policy.

The legal basis, therefore, did not allow the Commission to coordinate fully the ex-ante conditionality assessment with the European Semester and other information sources.

53. Ex-ante conditionalities are minimum requirements. Their fulfilment is assessed solely on the basis of the criteria established in Annex XI CPR as required by Article 19(3) CPR. The European Semester process is based on a different framework. Fulfilling an ex-ante conditionality does not mean that further improvements are not possible or even necessary from a policy perspective. This also explains why it is possible that EAC 8.1 is assessed as being fulfilled (as the minimum conditions established by Annex XI CPR are met), whilst Member States still want or are recommended (within the framework of the European Semester) to further improve the delivery of their ALMPs by making investments under the investment priority to which EAC 8.3 is linked.

## **Box 2 - Inconsistencies between ex-ante conditionalities and country-specific reports in the assessment of Member State's delivery of active labour market policy – examples of Poland Spain and Croatia**

The Commission refers to its reply under paragraph 53.

55. The reference to Special Report 24/2016 is based on the findings of the State aid schemes monitored by DG COMP. The ex post monitoring is sample based and do not necessarily involve funding from ESI funds. The Commission services analysed the Member States' self-assessments. They were discussed with Member States.

The State aid ex-ante conditionality requires that the basic framework conditions for efficient and effective use of the funds are in place. Regarding quality of compliance it should be noted that according to the CPR the 'assessment of fulfilment by the Commission shall be limited to the criteria laid down in the Fund-specific rules and in Part II of Annex XI, and shall respect national and regional competences to decide on the specific and adequate policy measures including the content of strategies' (Art 19).

57. See Commission reply to paragraph 32.

59. A study commissioned by the European Commission has concluded that "Ex-ante conditionalities triggered changes at national and regional level, which would not have been put in place or would have happened at a slower rate"<sup>1</sup>. The Staff Working document of the Commission<sup>2</sup> presents other examples of actions taken by the Member States, which have an added value, provided that the Member States ensure their proper implementation and follow-up in the future.

The new policy development and structural reforms triggered by EAC have a positive spill-over effect on public and private investment beyond that related to Cohesion policy.

In addition, ex ante conditionalities have introduced minimum requirements and conditions which did not exist in any of the former cohesion policy legislative frameworks. While the ambitious conditions proposed by the Commission (COM (2011) 615) were not retained in the subsequent legislative process, imposing minimum conditions is expected to improve the effectiveness and efficiency of spending.

61. In accordance with Article 19(5) CPR, the Commission had the option (but not the obligation) to suspend interim payments at the time of the adoption of the programmes where this was necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives.

The Commission is currently analysing the reports on the completion of the action plans to fulfil ex ante conditionalities, submitted by the Member States in the framework of annual implementation reports and progress reports.

Only after the analysis of these documents it will be in a position to consider suspensions linked to the failure to complete action plans.

70. The performance frameworks in adopted programmes include various indicators to make sure that programmes are on their path to deliver what was agreed. The output indicators and key implementation steps represent the majority of them, but the financial indicators are also included to provide approximation on the overall progress of the priority axis. Moreover, the performance framework alone may not guarantee better results. It has to be accompanied by other elements of the result orientation.

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<sup>1</sup> Study by consortium led by Metis, for the European Commission, page 121, [http://ec.europa.eu/regional\\_policy/en/information/publications/studies/2016/the-implementation-of-the-provisions-in-relation-to-the-ex-ante-conditionalities-during-the-programming-phase-of-the-european-structural-and-investment-esi-funds](http://ec.europa.eu/regional_policy/en/information/publications/studies/2016/the-implementation-of-the-provisions-in-relation-to-the-ex-ante-conditionalities-during-the-programming-phase-of-the-european-structural-and-investment-esi-funds)

<sup>2</sup> Commission Staff Working Document "The value added of Ex ante Conditionalities in the European Structural and Investment Funds" SWD(2017)127



72. The result orientation of programmes depends on several interacting elements including a good analysis of needs, reliable intervention logic with clear specific objectives, well-chosen result indicators reflected in the selection criteria and, also, a well-designed performance framework with realistic and achievable milestones and targets.

Result indicators may not be appropriate to include in the performance framework under the ERDF and Cohesion Fund, because of the timing when results can be achieved and captured by the system. Depending on the nature of the indicator, an evaluation may be necessary to disentangle the effects of the policy from those factors external to the programme.

74. The legal requirement states that a performance framework for a priority axis should include a financial indicator and an output indicator and, where appropriate, a result indicator (see point 2 of Annex II CPR).

75. The KIS are used to mark an important stage in the implementation of operations under a priority, necessary to achieve targets set for 2023, not just the start of implementation.

79. The compliance of milestones and targets with the criteria set in Annex II of the CPR was verified at the moment of programme adoption. The Member States may propose a revision of milestones and targets if they turned out to be under- or overestimated due to the incorrect assumptions. Such a request needs to follow the procedure for programme amendment defined in Article 30 of CPR and the initiative to launch it rests solely with the Member State.

**Box 4 - Example of values that could not be verified for the two Spanish OPs; ‘Smart Growth’ and ‘Andalucia ERDF’.**

The documents made available for the two Spanish ERDF programmes, include information about the method of the calculation, the ERDF amount corresponding to each indicator and the proposed milestone and target value. There are indeed no unit costs provided to verify these values. However, it needs to be noted that the assessment by the Commission includes also a qualitative part based on professional judgement.

80. Article 4 (3) of Regulation 215/2014 obliges managing authorities to provide this information at the Commission request. Due to the variety of indicators, which could be used, there was no template for the provision of information on methodologies and criteria applied to select indicators and fix milestones and targets. It is therefore conceivable that the level of details differs from document to document.

82. The Commission notes that these are the requirements of the legal basis in place. The Commission is bound by the legal basis. The definition of milestone achievement, included in Article 6 (2) of the Commission Implementing Regulation, provides certain margin, to take account of the complexity of most of the interventions covered by the ESI Funds, This is coupled with the fact that the performance framework is a novel solution and the allocation of the reserve will be an automatic exercise.

85. At the time of the conception of the current set up of the Performance Reserve allocation, the Commission considered that keeping the reserve at national level ensures compliance with the main objective of Cohesion Policy, i.e. increase economic, social and territorial cohesion, and the objectives as defined by the TFEU (Art. 176).

See also Commission reply to paragraph 72.

86. Articles 22 (4) and (5) and 30 (3) of CPR provide limits for this flexibility: the performance reserve has to be transferred from the priorities, which have not achieved their milestones, to the ones, which have achieved them; as a rule, reallocation has to be consistent with thematic concentration requirements and minimum allocations set out in this Regulation and the Fund-specific rules. The reallocation proposal has to comply with applicable rules, be consistent with the

development needs of the Member State or the region, and may not entail a significant risk that the objectives and targets included in the proposal cannot be achieved.

87. The Commission notes that the suspension of payments is a last measure to improve the programme implementation and is applied in case other measures fail to produce the required values. There are further steps requiring the Member States to intervene and correct implementation weaknesses before imposing a suspension of payments. This process is part of the Commission monitoring of programme implementation.

88. In these cases, the Member States may propose a change in the value set for a milestone. However, this change is endorsed only once the Commission adopts the proposed programme amendment.

89. In the case of the ERDF and the Cohesion Fund, result indicators measure changes, which are due to the actions co-financed by the public intervention, for example by the Funds, as well as other factors. If the change we observe in the value of the result indicator is not solely dependent on the intervention of the Funds, the Commission cannot impose corrective measures on the managing authorities for failure to achieve something, which is not under their control.

91. The limits for the application of financial corrections were introduced in order to avoid situations, where managing authorities are penalised for changes not fully under their control. Given the long period till the achievement of targets the unpredictability of external factors is increased.

93. The limits for the application of suspension of payments and financial corrections were introduced in order to avoid situations, where managing authorities are penalised for changes not fully under their control. Moreover, the sanctions foreseen in the performance framework are not the only mechanisms available. Low absorption may lead to the decommitment of funds during the programming period, based on the N+3 rule.

## **CONCLUSIONS AND RECOMMENDATIONS**

96. The fact that an action plan is not reported as ‘completed’ does not mean that the action plan has not been implemented.

The Commission recalls that there is no legal obligation for Member States to report prior to June/August 2017.

97. The assessment of fulfilment by the Member State and the Commission is limited to the criteria established in Annex XI CPR. Any elements going beyond these criteria which may be taken into account within the context of the European Semester cannot be used for assessing the fulfilment of the ex-ante conditionalities.

The Commission also underlines that its initial proposal on the ex-ante conditionality criteria contained many qualitative elements.

The use of the Commission guidance on ex-ante conditionalities, which was mandatory for the Commission services, significantly reduced the room for interpretation of the criteria in the CPR.

98. In accordance with Article 19(5) CPR, the Commission had the option (but not the obligation) to suspend interim payments at the time of the adoption of the programmes where this was necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives.

The Commission is currently analysing the reports on the completion of the action plans to fulfil ex ante conditionalities, submitted by the Member States in the framework of annual implementation reports and progress reports.

Only after the analysis of these documents it will be in a position to consider suspensions linked to the failure to complete action plans.

100. The Commission has taken several initiatives to assess the mechanism of ex ante conditionalities on the ground, for example via a study on ex ante conditionalities and the Staff Working document - which will be used by the Commission when preparing the legislative proposal for the post-2020 programme period.

103. The conditions for the allocation of the performance reserve are stipulated in the underlying legislation. The Commission will follow the legislative requirements with regard to the level of achievement of the milestones necessary for the allocation of the performance reserve. The definition of milestone achievement, included in Article 6 (2) of the Commission Implementing Regulation, provides certain margin, to take account of the complexity of most of interventions covered by the ESI Funds. The reason for these rules is the fact that the performance framework in its current design is a novel solution.

104. The performance framework and reserve are not designed to result in significant reallocation of Cohesion spending. They are incentives to the managing authorities to deliver as planned on outputs, which are under their control. Together with other interacting elements of the result orientation - a good analysis of needs, reliable intervention logic with clear specific objectives, well-chosen result indicators reflected in the selection criteria – this should ensure that each programme perform well and attain its objectives.

Furthermore, result indicators may not be appropriate for the performance framework because of the timing of when results can be achieved and captured by the system. Depending on the nature of the indicator, an evaluation may be necessary to disentangle the effects of the policy from factors external to the programme.

105. At the time of the conception of the current set up of the Performance Reserve allocation, the Commission considered that keeping the reserve at national level ensures compliance with the main objective of Cohesion Policy, i.e. increase economic, social and territorial cohesion, and the objectives as defined by the TFEU (Art. 176).

The result orientation of programmes depends on several interacting elements including a good analysis of needs, reliable intervention logic with clear specific objectives, well-chosen result indicators reflected in the selection criteria and, also, a well-designed performance framework with realistic and achievable milestones and targets.

106. The performance framework relies on various indicators in order to make sure that programmes are on their path to deliver what was agreed. Result indicators may not be appropriate (for ERDF/CF), because the timing when results can be achieved and captured by the system is not compatible with the compulsory timeframe for a useful performance reserve allocation.

107. The Key Implementation Steps are used to mark an important stage in the implementation of operations under a priority. Those steps are necessary to achieve targets set for 2023 and are not a mere indication of the start of implementation.

108. Article 4 (3) of Regulation 215/2014 obliges managing authorities to provide this information at the Commission request. Due to the variety of indicators, which could be used, there was no template for the provision of information on methodologies and criteria applied to select indicators and fix milestones and targets. It is therefore conceivable that the level of details differs from document to document.

109. The limits for the application of suspension of payments and financial corrections were introduced in order to avoid situations, where the managing authorities are penalised for changes external to the programme and not fully within their control. Moreover, the sanctions foreseen in the performance framework are not the only mechanisms available.

In particular the delay in the projects' start and implementation, may lead to low absorption and subsequently to the decommitment of funds during the programming period, based on the N+3 rule. This means that the low level of implementation may entail reduction in available funding.

111. At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

#### **Recommendation 1- Further develop ex-ante conditionalities for the post-2020 period**

At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

(a) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance.

(b) Under the condition that ex ante conditionalities are maintained for post-2020 and taking into account the specificities of each process, the Commission partially accepts this recommendation. However, it will strive towards ensuring consistency.

(c) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance.

(d) Under the condition that ex ante conditionalities are maintained for post-2020, the Commission accepts the recommendation in substance.

#### **Recommendation 2- Consider turning the performance reserve for the post-2020 period into a more results-oriented instrument**

At this stage the Commission is not in a position to make specific commitments in relation to legislative proposals for the post-2020 period.

Under the condition that the performance framework and reserve are maintained for post-2020, the Commission accepts the recommendation.

(c) The Commission underlines that its main objective is to help the Member States to properly implement the Funds and, therefore, to avoid underperformance. The Commission will continue to put efforts to further achieve this objective, i.e. by providing guidance, technical expertise, possibilities to discuss and exchange experience, etc.

Payment suspensions and financial corrections are actions to be undertaken only when all other efforts have failed. The Commission will review and will continue to use these actions also in the future, but focusing its efforts in doing preventive actions as far as possible.

<b>Event</b>	<b>Date</b>
Adoption of Audit Planning Memorandum (APM) / Start of audit	7.12.2016
Official sending of draft report to Commission (or other auditee)	13.7.2017
Adoption of the final report after the adversarial procedure	4.10.2017
Commission's (or other auditee's) official replies received in all languages	21.11.2017

The legislative package for the 2014-2020 programme period introduced two instruments to make Cohesion spending more results oriented: ex-ante conditionalities and the performance reserve. While the former specifies certain conditions that must be fulfilled before the programme implementation, the latter requires most ESIF programmes to set aside 6 % of the total funding to each Member State which will be definitively allocated subject to the outcome of a performance review in 2019. In this report we examined whether these two instruments were effectively used to incentivise better Cohesion spending by Member States.

We found that the ex-ante conditionalities provided a consistent framework for assessing the Member States' readiness to implement EU funds. However, their assessment was a lengthy and time-consuming process and it remains uncertain to what extent they have and will effectively lead to changes on the ground. The maintenance of the ex-ante conditionalities depends on the commitment and ownership by the Member States. We also consider that the performance framework and reserve provide little incentive for a better result orientation of the OPs since they are mostly based on spending and outputs.



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