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Special Report

Commission's and Member States' actions in the last years of the 2007-2013 programmes tackled low absorption but had insufficient focus on results

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

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GLOSSARY AND ABBREVIATIONS

Absorption	Funding is considered as absorbed when EU funding is paid out by the Commission to a Member State's OP as co-financing towards eligible projects. It includes advances, interim and final payments.
Absorption rate	The percentage of the total amount committed to an operational programme that has been absorbed, i.e. paid.
Allocated envelope	The total amount assigned to a Member State or an operational programme (OP) in a given programme period. This amount is the theoretical maximum that can be paid.
Audit authority	It provides assurance to the Commission regarding the effective functioning of the management systems and internal controls for an OP (and, as a consequence, the legality and regularity of the expenditure certified). Audit authorities are designated by the Member State generally departments within state chancelleries, at ministries of finance (or internal control bodies under ministry authority), at other ministries or within supreme audit institutions. They must be functionally independent from the bodies managing the funds. An audit authority reports the findings of its systems audits and audits of operations to the managing and certifying authorities for the OP concerned. Once a year, they report their annual work in their annual control report to the Commission. If the audit authority considers that the managing authority has not taken appropriate corrective action, it must draw the Commission's attention to the matter.
Certifying authority	It is designated by the Member State to carry out first level checks on the expenditure declared by managing authorities and certify that this expenditure is legal and regular.
COCOF	The Coordination Committee of the Funds (COCOF) is a standing committee of the European Commission. Its function is to discuss issues relating to the implementation of the regulations governing the Structural and Cohesion Funds. COCOF guidance notes serve as recommendations with practical examples and information, without being legally binding or limitative.
Cohesion Fund (CF)	The Cohesion Fund aims to strengthen economic and social cohesion within the European Union by financing environmental and transport projects in Member States with a per capita GNP of less than 90 % of the EU average.
Commitment	Legal pledge to provide finance subject to certain conditions, whereby the EU commits itself to reimbursing its share of the costs of an EU-funded project once that project is completed.
Community strategic guidelines on Cohesion	The Community strategic guidelines contain the principles and priorities of cohesion policy and suggest ways the European regions can best use the funds made available for national and regional aid programmes over the 2007-2013 period. National authorities must use the guidelines as the basis for drafting their

	national strategic priorities and planning for 2007-2013, known as the national strategic reference framework.
Common strategic framework (CSF)	Provides guidance and helps to harmonise the objectives to be achieved by the various EU Cohesion policy funds and other EU instruments and policies.
Closure	The financial settlement, through payment of the final balance to the Member State or recovery of sums paid in excess by the Commission. Closure is the last stage in the lifecycle of a programme
Deadweight loss	Deadweight occurs when funding is provided to support a beneficiary who would have made the same choice without this aid. In such cases, the outcome cannot be attributed to the policy, and the aid paid to the beneficiary has had no impact. Thus the share of expenditure which generates deadweight is ineffective by definition, because it does not contribute to the achievement of objectives.
De-commitment	Cancellation of all or part of a commitment which has not been used. De-commitment is automatic after a certain period of time, usually two or three years (the 'n+2/3 rule').
EU added value	The value that an EU action adds to the value that would otherwise have been created by Member States acting alone.
European Regional Development Fund (ERDF)	The aim of the European Regional Development Fund is to reinforce economic and social cohesion within the European Union by redressing the main regional imbalances. To this end, it provides financial support for the creation of infrastructure and for productive job-creating investment, mainly for businesses.
European Social Fund (ESF)	The aim of the European Social Fund is to strengthen economic and social cohesion within the European Union by improving employment and job opportunities (mainly through training measures), and encouraging a high level of employment and the creation of more and better jobs.
Major project	Major projects comprise an economically indivisible series of works, activities or services fulfilling a precise technical function and having clearly identified aims and whose total cost exceeds 50 million euro, or 75 million euro in the case of a transport project. The Commission's approval is required at individual project level.
Managing authority	A managing authority is a national, regional or local public authority (or any other public or private body), which has been designated by a Member State to manage an operational programme. Its tasks include selecting projects to be funded, monitoring how projects are implemented and reporting to the Commission on financial aspects and results achieved. The managing authority is also the body which imposes financial corrections on beneficiaries following audits carried out by the Commission, the European Court of Auditors (ECA) or any authority in a Member State.

Multiannual Financial Framework	The multiannual financial framework (MFF) establishes the spending priorities and maximum amounts that the EU may spend in particular areas over a fixed period of several years. The current MFF covers 2014-2020, while the previous ones were 2007-2013 and 2000-2006 (Agenda 2000).
National strategic reference framework	A reference document for the programming of EU funds at national level for the 2007-2013 period. It ensures that assistance from the Funds is consistent with EU strategic guidelines on Cohesion and identifies the link between EU priorities on the one hand and national and regional priorities on the other. For the 2014-2020 programme period, Partnership Agreements (see definition below) replaced the National strategic reference framework.
Operational programme (OP)	An OP sets out a Member State's priorities and specific objectives and describes how funding (EU and national public and private co-financing) will be used during a given period (currently seven years) to finance projects. The projects within an OP must contribute to a certain number of objectives. OP funding may come from the ERDF, the CF and/or the ESF. The OP is prepared by the Member State and must be approved by the Commission before any payments can be made from the EU budget. OPs can only be modified during a programme period if both parties agree.
Partnership agreements	Partnership agreements are entered into by 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 investment priorities, linking them to the overall aim of the Europe 2020 strategy for smart, sustainable, and inclusive growth. They also include details of any 'ex-ante conditionalities' (i.e. prerequisites for the effective and efficient use of funds) and performance management frameworks. They are prepared by the Member State in a dialogue with the Commission and must be adopted by the Commission.
Phasing	A way of organising the financing of a project over two programme periods in order to limit the risk of incomplete (and thus ineligible) projects and increase absorption in the first phase (2007-2013).
Priority axis	One of the priorities of an operational programme strategy comprising a group of related operations with specific, measurable goals.
Programme period	The multi-annual timeframe within which Structural Funds and Cohesion Fund expenditure is planned and implemented.
Retrospective project	Retrospective projects or operations are those which have incurred expenditure from national sources or are completed before EU co-financing has been formally applied for or awarded,

	i.e. they are financed retrospectively. In the 2014-2020 programme period projects or operations that are physically completed or fully implemented before the beneficiary submits the application for funding are not eligible for EU funding.

EXECUTIVE SUMMARY

About Absorption

I. The aim of Cohesion policy is to reduce development imbalances between regions in the European Union. It accounts for around a third of the EU budget, implemented through Operational Programmes (OPs). The funds are made available at the start of a multiannual programme period. Absorption capacity refers to a Member State's ability to efficiently and effectively spend the financial resources it has been allocated. Member States absorb funding when they receive a payment from the EU budget as co-financing towards eligible projects. To maintain a focus on achieving effective results, it is crucial that Member States avoid a situation where a significant amount of funds needs to be absorbed at the end of the programme period, since the rush to absorb funds may lead to insufficient consideration to value for money. Thus, while absorption is important to achieve policy objectives, it is not an end in itself.

How we conducted the audit

II. We examined whether the Commission's and Member States' actions were effective in absorbing funding from the ERDF, ESF and CF during the 2007-2013 programme period. We carried out audit visits to four Member States: the Czech Republic, Hungary, Italy and Romania. The audit covered the 2007-2013 programme period. However, we make comparisons with the 2000-2006 and 2014-2020 programme periods and highlight risks concerning absorption for the current period.

What we found

III. We found that, for both the 2007-2013 and 2014-2020 programme periods the late adoption of the legislative framework, six months and two weeks prior to the start of the programme periods respectively, meant late adoption of the OPs. For both periods, most of the OPs were not adopted until after one year into the programme period. This had an inevitable knock-on effect on the start of spending of the allocated funds.

IV. Implementation had started slowly in the 2007-2013 period but was even slower for 2014-2020. Beside the above knock-on effect the overlap of programme periods was one

further reason for the slow start as this meant that Member States were still spending the previous period's funding after the subsequent programme had started.

V. During the 2007-2013 programme period, the Commission did monitor the absorption of funds, but only around 13 months before the end of the eligibility period did it put in place a Task Force to assist Member States with poorly absorbing OPs. Eight Member States received support from the Task Force for Better Implementation. The measures taken led to a marked increase in absorption for the assisted Member States. At the start of 2018 the average EU absorption rate stood at 97.2 %. Several Member States did not manage to use all the funding available and unused funding at the end of 2017 amounted to 4.4 billion euros. The final absorption rate and the final value of unused funding will be known once closure is complete.

VI. Measures used to increase absorption include: OP revisions, splitting projects into phases between programme periods, co-financing projects retrospectively, advances to financial instruments and contractual advances. Some of these measures focussed mainly on absorption and compliance with rules with little consideration for results. In particular, OPs were frequently revised calling into question the soundness of the analyses underlying the programming process and subsequent revisions and the ability to achieve the OP and Cohesion policy objectives.

VII. The Commission does not have a comprehensive overview of all the measures used and the impact of each measure on absorption, due to insufficient information provided by Member States and because for some measures (such as retrospective projects and contractual advances) the legislative framework does not require Member States to report to the Commission.

What we recommend

VIII. The Commission should:

- propose to the Council and the European Parliament a timetable for negotiation and adoption of the legislative framework and programme documents with a view to ensure that OP implementation can start at the beginning of the programme period;

- where key elements of performance are affected, ensure that revisions of OPs are based on a sound and comprehensive assessment of the OPs and partnership agreements and related needs and that the revision is primarily undertaken to provide better results; ensure that it has the means to obtain information allowing it to monitor absorption, identify slow and rapid absorption and assess ex-ante the need and the impact of measures to know whether to use them or not; and

- when providing targeted support to accelerate implementation ensure that actions are undertaken with a focus on delivery of good results.

INTRODUCTION

Policy objectives, funding and management

1. The aim of Cohesion policy is to reduce development imbalances between regions, restructure declining industrial areas and encourage cross-border, transnational and interregional cooperation in the European Union[1]. To achieve these aims, EU funds are used to develop various areas such as the low carbon economy, transport infrastructure, support for SMEs, integration of people into the labour market and social inclusion of the disadvantaged.

2. The multiannual financial framework (MFF) outlines the maximum annual amounts which the EU may spend for different policies, including Cohesion. Around a third of the EU budget is allocated to Cohesion policy. Cohesion policy is delivered through the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF). In current prices, the total allocation to the ERDF, ESF and CF mounted to around 261 billion euros in the 2000-2006 programme period, 346 billion euros in 2007-2013 and some 365 billion euros in 2014-2020[2]. The relevant amount of Cohesion funding is then pre-allocated among the Member States.

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[1] Articles 174 and 176 of the TFEU and Article 89 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

[2] Funding committed to the ERDF, CF and ESF during the programme period 2007-2013 amounted to 342.5 billion euros. The final amounts committed will only be known once all proceedings have been closed.

3. The rules governing Cohesion policy during the 2007-2013 programme period are laid down in a General Regulation[3] and its implementing rules[4], and fund-specific regulations concerning the ERDF, ESF and the CF[5]. These are complemented by Commission implementing regulations, delegated acts and guidance documents. A new legislative package is adopted for every programme period.

4. These funds are implemented through Operational Programmes (OPs), which set out the investment priorities and specific objectives. These also describe how funding will be used during the programme period[6] to finance projects. Member States allocate their national envelope to the different national or regional OPs in line with their national strategic and EU Cohesion objectives.

5. Implementation of Cohesion policy is shared by the Member States and the Commission. The current Commission College commenced its five year term in November 2014. The Commission services responsible for overall management of these policy areas are the Directorates-General for Regional and Urban Policy (DG REGIO) and Employment, Social Affairs and Inclusion (DG EMPL). They may provide the Member States with administrative and technical support in order to ensure that funds are implemented properly[7]. In the Member States, national and/or regional Cohesion programme authorities are tasked with achieving value for money with the allocated EU funds and ensuring the legality and

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[3] Council Regulation (EC) No 1083/2006 laying down the general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25).

[4] Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/ and of Regulation (EC) No 1080/2006 (OJ L 371, 27.12.2006, p. 1).

[5] Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund (OJ L 210, 31.7.2006, p. 1) and Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund (OJ L 210, 31.7.2006, p. 12). Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund (OJ L 210, 31.7.2006, p. 79).

[6] The multiannual framework within which Structural Funds and Cohesion Fund expenditure is planned and implemented is referred to as programme period.

[7] Article 45 of Regulation (EC) No 1083/2006.

regularity of co-financed operations under the Commission's supervision and final responsibility[8].

6. The main phases of a programme period are outlined in ***Figure 1***. For each programme period, a new legislative framework is adopted, followed by the submission and adoption of the programming documents. Implementation can start from the 1 January of the first year of the programming period or when the OP is submitted to the Commission for approval (whichever is earlier). However, payments from the EU budget towards an OP) can start only once the OP has been adopted. Therefore, delays in adopting the legal framework or OPs have a knock-on effect on payments from the EU budget. Finally, closure is the last stage in the OP lifecycle and results in a final payment or recovery of funds unduly paid.

7. The timeline for these phases is not confined to the period 2007 to 2013. For instance part of the implementation and closure of the 2007-2013 programme period occurred after 2013, after the 2014-2020 period had already started. Thus, there was an overlap between programme periods.

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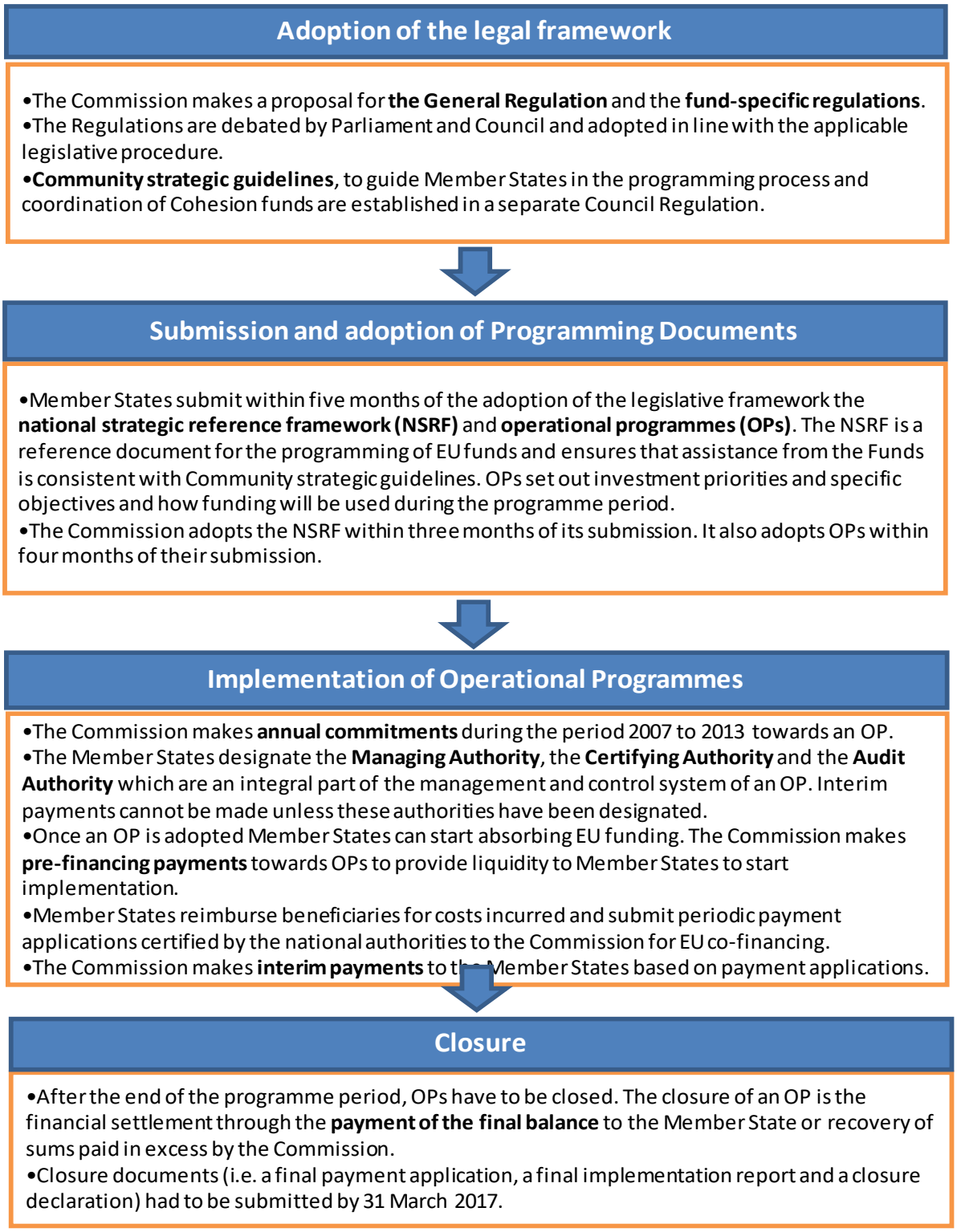
[8] Article 317 of the Treaty on the Functioning of the European Union (TFEU).

<u>Figure 1</u> – Main phases in the 2007-2013 programme period



8. The funding allocated to an OP is divided into annual instalments over the seven-year programme period[9]. Each instalment gives rise to a budgetary commitment, which represents EU funding set aside for an OP which is used to co-finance eligible expenditure on projects. Such expenditure incurred by a beneficiary will result in an application for reimbursement made by a Member State to the Commission, which will then authorise a payment from the commitments. Funds are considered to be absorbed once the Commission makes a payment[10].

9. During the 2007-2013 programme period, commitments had to be used (i.e. they had to be covered by a pre-financing or an interim payment) within two years, i.e. expenditure by beneficiaries could be paid until 31 December 2015 with applications for reimbursement made subsequently. Funding was de-committed i.e. it could no longer be spent by the Member States if it was not used within two years; this is known as the 'n+2 rule'[11]. The n+2 rule was extended by one year (i.e. n+3) for certain Member States[12] for certain commitment instalments[13].

AUDIT SCOPE AND APPROACH

10. The purpose of this audit was to assess whether the Commission's and Member States' actions were effective in absorbing funding from the ERDF, ESF and CF during the 2007-2013 programme period. In particular, we examined whether:

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[9] Article 75 of Regulation (EC) No 1083/2006.

[10] Commission payments include pre-financing, in line with Articles 76 and 82 of Regulation (EC) No 1083/2006.

[11] Article 93 of Regulation (EC) No 1083/2006.

[12] The Bulgaria, Czech Republic, Estonia, Greece, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia and Slovakia.

[13] For the 2014-2020 programme period the n+3 rules applies for all Member States, in line with Article 136 of Regulation (EU) No 1303/2013.

- the Commission detected absorption difficulties and addressed them in a timely manner through measures aiming to improve absorption and by supporting Member States in implementing them;

- the Member States used these measures with due consideration to compliance and value for money (see ***Box 1***).

11. While the audit covered the 2007-2013 programme period references are also made to the 2000-2006 and 2014-2020 periods. Such references are made for comparison purposes and to highlight risks concerning absorption for the current period.

12. Our audit work comprised:

- an analysis of provisions in the legal framework of the 2007-2013 programme period which impact absorption;

- a review of relevant Commission technical guidelines on the implementation of certain legal provisions affecting absorption and on closure;

- an assessment of Commission monitoring procedures for the 2007-2013 programme period relating to absorption, including the work done by the Task Force for Better Implementation[14];

- an analysis of 16 ERDF and CF OPs and four ESF OPs from seven Member States: Bulgaria, the Czech Republic, Hungary, Italy, Romania, Slovakia and Spain. Of these OPs, seven ERDF and CF OPs and two ESF OPs were reviewed in depth. A list of the OPs covered is included in Annex 1;

- audit visits to four Member States: the Czech Republic, Hungary, Italy and Romania;

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[14] The Task Force for Better Implementation was set up to assist Member States who were facing difficulties in using the remaining funding from the 2007-2013 programme period. It concentrated on 38 ERDF and CF OPs and covered eight Member States.

- interviews with officials from DG REGIO and DG EMPL, including those who participated in the Task Force for Better Implementation.

Box 1 - Absorption is a means to achieve results and not an end in itself

Absorption capacity refers to a Member State's ability to efficiently and effectively spend the financial resources it has been allocated[15]. The Court has already noted that it is an ongoing challenge for the Union to obtain good qualitative results from schemes where funds are pre-allocated among Member States and absorption is an implicit objective[16]. We also reported that the 2007-2013 legislative framework focused primarily on spending in line with the rules, with limited focus on performance[17].

Absorption should not be an end in itself, but rather a means of investing in actions to help achieve national and EU policy objectives. Cohesion policy funding is significant and should bring important benefits to EU citizens. In order to do so, it is particularly important that funding is spent in a way that represents value for money.

OBSERVATIONS

The Commission reacted late to slow implementation but its actions helped increase absorption

13. We compared the timing of the adoption of the legal framework for the 2007-2013 and 2014-2020 programme periods to determine how much time Member States had before the start of the programme period to submit OPs. We looked at the timing of the adoption of the OPs for the 2007-2013 and 2014-2020 programme periods to determine when Member States could start absorbing funds. We also looked at the absorption rates in the 2000-2006, 2007-2013 and 2014-2020 programme periods to identify similarities in the spending

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[15] European Parliament - Committee on Regional Development, "Report on absorption of Structural and Cohesion Funds: lessons learnt for the future Cohesion policy of the EU (2010/2305(INI))", 25 July 2011.

[16] Opinion No 7/2011 (C 47/1, 17.2.2012, p. 1).

[17] See 2013 annual report, Chapter 10 "Getting results from the EU budget", paragraph 10.10 (OJ C 398, 12.11.2014).

patterns and what can be expected in the current period. Lastly, we assessed how the Commission monitored absorption during the 2007-2013 period, whether it took timely action and what the results were.

Late adoption of the legislative framework and slow implementation resulting in increased pressure to absorb funds

14. . The adoption of the legislative framework is an essential pre-requisite for the preparation of OPs, because it establishes the regulatory framework and provides legal certainty to Member States that their spending plans and objectives as set in the OPs are in line with EU objectives. In turn, the adoption of the OPs by the Commission marks the start of payments from the EU budget towards an OP. To ensure that spending can commence at the start of the period, it is necessary that the Commission proposes and the legislator adopts, the legislative framework for an upcoming programme period well before it is due to start. Based on previous experience we estimate that a reasonable time-frame would be as follows:

- the Commission proposes the legislative framework 30 months (two-and-a-half years) before the start of the period;
- the legislator adopts the framework within 18 months of the Commission proposal;
- the Member States submit, and the Commission adopts, the national strategies (which were partnership agreements for the 2014-2020 programme period) and OPs within one year of the adoption of the legal framework.

15. This is important in order to avoid a backlog in implementation and undue pressure to absorb funding towards the end of the period, possibly at the expense of observing the rules and achieving good value for money.

Late adoption of the legislative framework and OPs had a knock-on effect on implementation

16. For the 2007-2013 period the Commission's proposal for the General Regulation was presented nearly 30 months before the start of the programme period and was adopted by the legislator nearly 24 months later, i.e. almost six months before the start of the period.

For the 2014-2020 programme period, the Commission's proposal for the Common Provisions Regulation (CPR) was presented nearly 27 months before the start of the programme period, and it took the legislator over 26 months to adopt it, i.e. only two weeks before the start of the programme period[18]. An overview of the timeline of the legislative procedure is provided in ***Figure 2***.

17. Compared to the 2007-2013 programme period, the additional time taken to adopt the 2014-2020 Common Provisions Regulation was due to:

- The Commission's legislative proposal was presented three months later (i.e. October 2011 compared to July 2004);
- The negotiation process between the Council and the European Parliament took two-and-a-half month longer due to the need to wait for the adoption of the Financial Regulation (in October 2012) and of the MFF (adopted only in December 2013) and negotiations as a result of a new legislative procedure[19].

18. In its communication on the post-2020 MFF[20] the Commission acknowledged that the late adoption of the 2014-2020 MFF delayed investments on the ground in various policy areas (including Cohesion). The Commission has encouraged an early political agreement on the post-2020 MFF in order to provide legal and financial certainty to the national and regional authorities and enable implementation to start immediately at the start of the programme period.

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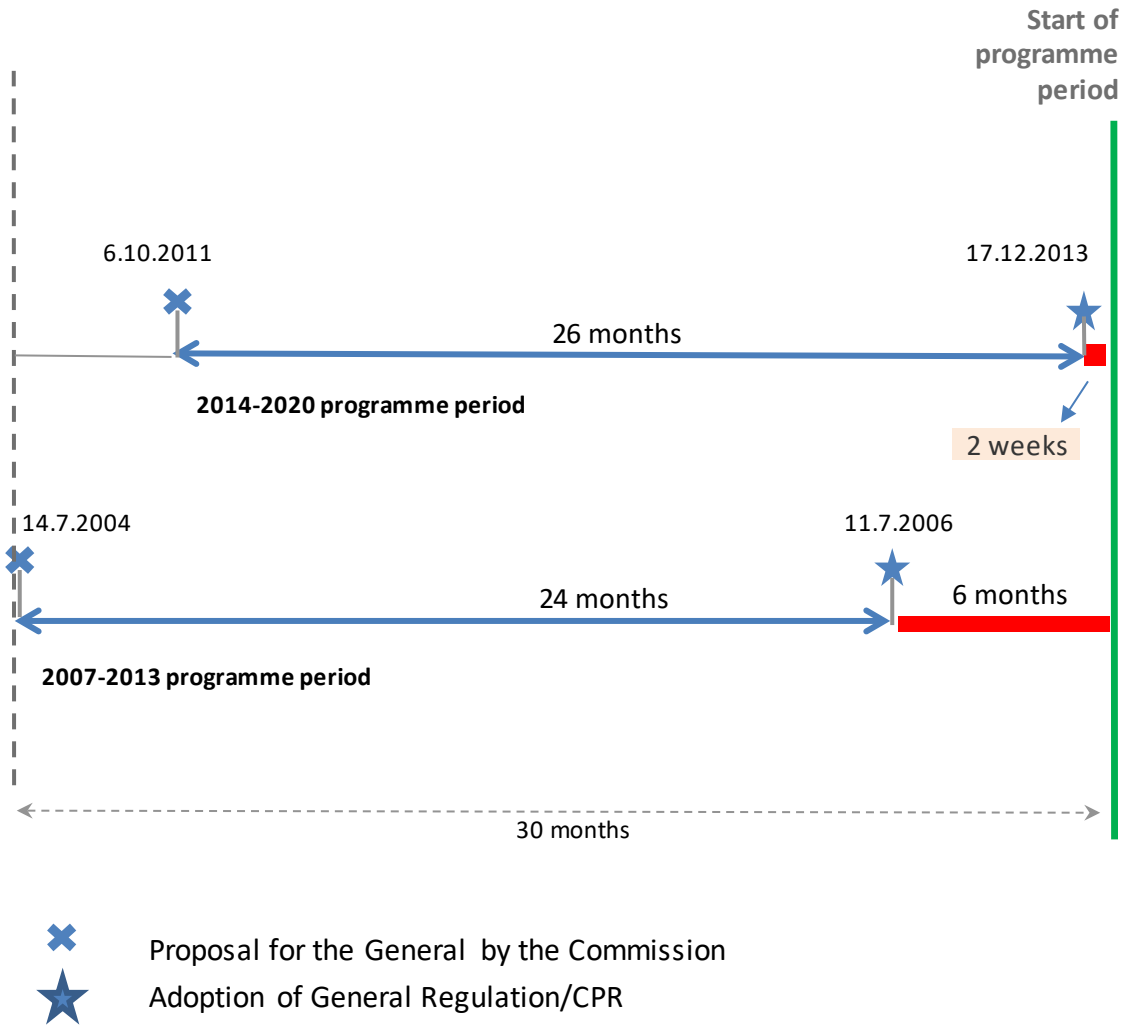
[18] For the 2007-2013 programme period the General Regulation was adopted by means of the special legislative procedure, i.e. the Council was in principle the sole legislator and the European Parliament had limited power of intervention. For the 2014-2020 period the CPR was adopted by means of ordinary legislative procedure, i.e. the Council and the European Parliament had an equal role in the negotiations.

[19] Special Report No 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", paragraphs 36 to 37.

[20] COM(2018) 98 final of 14 February 2018 "A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020".

Figure 2 – Timeline for the proposal and adoption of the legislative framework for the 2007-2013 and 2014-2020 programme periods



Source: ECA.

19. For the 2007-2013 and 2014-2020 programme periods no OPs had been adopted by the time the programme period commenced on 1 January 2007 and 2014, respectively. For the 2007-2013 period a bigger number of OPs were adopted by the end of the first year of the programme period compared to the 2014-2020 period (see ***Box 2***). This is mainly due to the delayed adoption of the legislative package and possibly more demanding negotiations for adopting Partnership Agreements and OPs than in the previous period[21] [22].

Box 2 – 2007-2013 and 2014-2020 OPs adopted after the programme periods had started

For the 2007-2013 programme period, 98 % (432 of 440[23]) of the OPs had been submitted and 95 % (416 of 440 OPs) had been adopted by the Commission by 31 December 2007. The bulk of the OPs (91 %) were adopted between July and December 2007. The average time from date of submission to adoption of an OP was around seven months.

For the 2014-2020 programme period, 95.5 % (371 of 387[24]) of the OPs had been submitted by the Member States and only 55.8 % (216 of 387 OPs) had been adopted by the Commission by 31 December 2014. The average time taken from date of submission to adoption of an OP was around eight months.

Absorption during the first years was slow

20. The annual spending pattern for the 2007-2013 programme period is shown in ***Figure 3***. Commitments at the start of the period are far bigger than payments, as Member States were still drawing upon commitments available from the 2000-2006 programme period, OPs were still being adopted or project selection procedures were still being finalised. By the end of the 2007-2013 programme period, with two years left until the end of the eligibility period (on 31 December 2015), less than two-thirds of commitments had been absorbed by payments.

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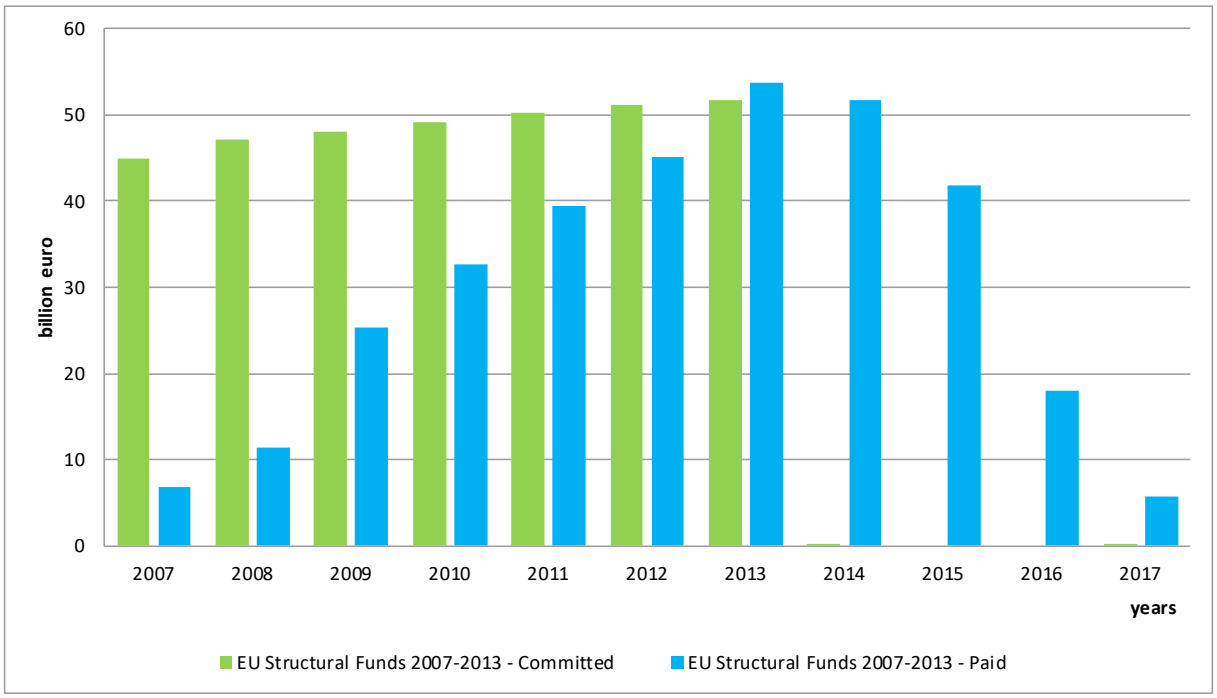
[21] Special Report No 2/2017, paragraphs 49 and 53 to 55.

[22] The negotiation took longer possibly because of new requirements introduced by the new legal framework, IT problems encountered with the new electronic information exchange system and a more complex OP adoption procedure at the Commission. (See ECA special report No 2/2017, paragraph 55).

[23] This includes: 249 ERDF and CF OPs; 118 ESF OPs; 73 ETC OPs.

[24] This includes: 124 ERDF and CF OPs; 95 ESF OPs; 92 Multi-fund OPs and 76 ETC OPs.

Figure 3 – Spending pattern for 2007-2013 programme period for the ERDF, ESF and CF

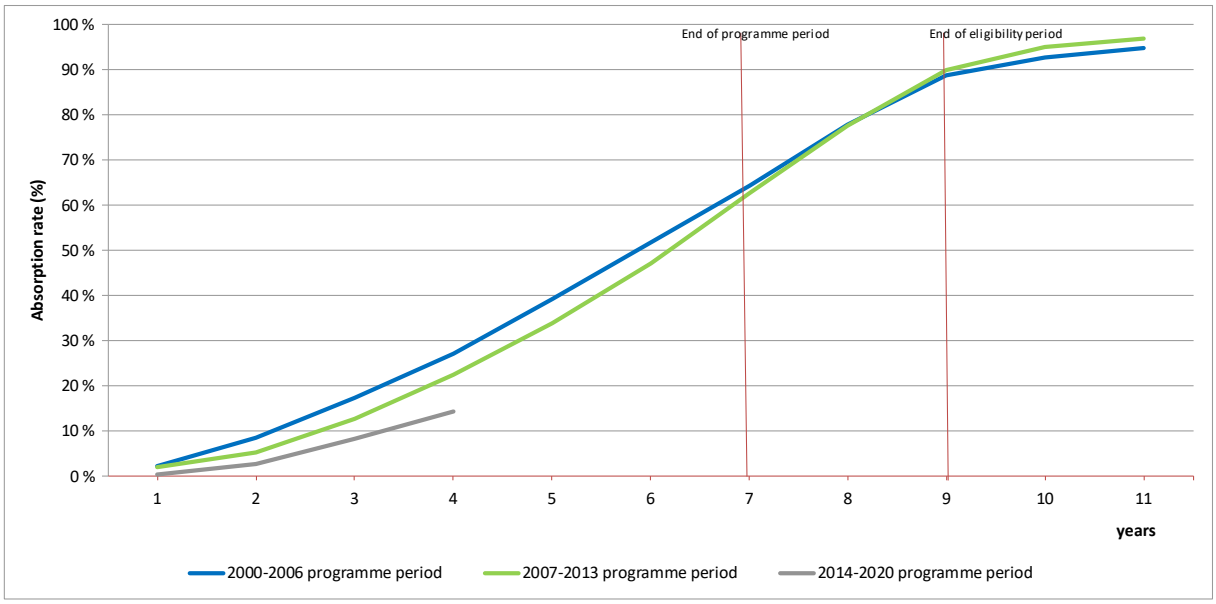


Source: ECA, based on of data provided by the Commission.

21. A comparison of absorption patterns for the 2000-2006 and 2007-2013 programme periods indicate similar profiles. For the 2014-2020 programme period absorption as of end 2017 (year 4 into the programme period) is slower. ***Figure 4*** shows the cumulative absorption rate[25] during these three programme periods from the start of the period (year 1) to the year when the closure declaration should be submitted (year 11).

[25] The absorption rate is calculated by dividing cumulative payments by the total commitments for ERDF, ESF and CF. For the 2014-2020 programme period the performance reserve is not included in the total commitments since this is dependent on the outcome of the performance review.

Figure 4 – Absorption rate in the 2000-2006, 2007-2013 and 2014-2020 programme periods for the ERDF, ESF and CF



Source: ECA, based on Commission data.

22. Besides the late adoption of the legislative framework and OPs, we identified at least two more factors that led to slow absorption in the first years of the 2007-2013 programme period compared to the previous period. Firstly, for the 2000-2006 programme period, the expenditure eligibility period - and therefore the deadline for closure - were extended by six months (up to June 2009 and September 2010 respectively) for most Member States[26]. This delayed implementation of the 2007-2013 programme period, as Member States were still using the commitments available from the previous period. Secondly, during the 2000-2006

[26] In view of the continuing economic difficulties, the eligibility period of 13 Greek programmes and 18 INTERREG III programmes were extended to 31 December 2009, bringing the submission deadlines to 31 March 2011. Following the earthquake in Abruzzo regional operational programme and INTERREG III A Italia-Adriatico were extended to 30 June 2010, with a submission deadline of 30 September 2011.

period, pre-financing was made in full once the first commitment had been made[27], whereas in the 2007-2013 programme period, this was staggered over the years 2007 to 2009.

23. The Court has already reported on the risk that delays in budgetary execution for the 2014-2020 period could be greater than those for the 2007-2013 period[28]. At the end of 2016 (three years into the programme period), only 77 % of authorities had been designated for the ERDF, ESF and CF OPs. This aggravated the already slow start (see ***paragraphs 16, 19*** and ***Box 2***), because while Member States authorities may launch calls and select projects, they cannot submit statements of expenditure to the Commission until they have been designated. As of May 2018, the designation process was nearly completed.

24. As of 1 March 2018, the first, second and third final accounts submitted by the Member States show cumulative expenditure amounting to only around 5°% of the budget allocated for the entire programme period[29].

25. The Commission reported that the rate of project selection for the 2014-2020 programme period started slowly. However, by July 2017, it had reached the same levels as in the previous period[30] and from then on, the Commission expects implementation rates to be broadly similar to the 2007-2013 programme period. However, given the absorption difficulties in the 2007-2013 programme period and the slower start of the 2014-2020 period, it is likely that absorption difficulties will also be encountered in 2014-2020.

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[27] This amounted to 7 % of the contribution from the funds. Article 32 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (L 161, 26.6.1999, p. 1).

[28] See the Court's 2015 and 2016 annual reports, Chapter 6 "Economic, Social and Territorial Cohesion".

[29] The third final accounts covering the period 1 July 2016 to 30 June 2017 are subject to the Commission's examination and acceptance which is due by 31 May 2018. As a result cumulative expenditure may change.

[30] My Region, My Europe, My Future, 7th Report on Economic Social and Territorial Cohesion, European Commission, September 2017, p. 177.

26. The Court noted that for nine Member States[31] outstanding commitments on 2014-2020 ESI funds at the end of 2016 represented more than 15 % of 2016 general government spending. Given the sizeable commitment appropriations still available under the 2014-2020 MFF, Member States where ESI funds represent a significant percentage of general government spending may find it challenging to identify sufficient high-quality projects on which to spend the available funding or to provide co-financing[32].

In the 2007-2013 programme period absorption patterns varied across Member States and several did not manage to use all the funding available

27. Our examination of the absorption by Member States for the 2007 - 2013 programme period shows that some Member States absorbed the funds more quickly than others. However, we note that absorption is a means to achieve objectives and results, but not an end in itself. ***Figure 5*** shows the disparities in absorption rate across Member States.

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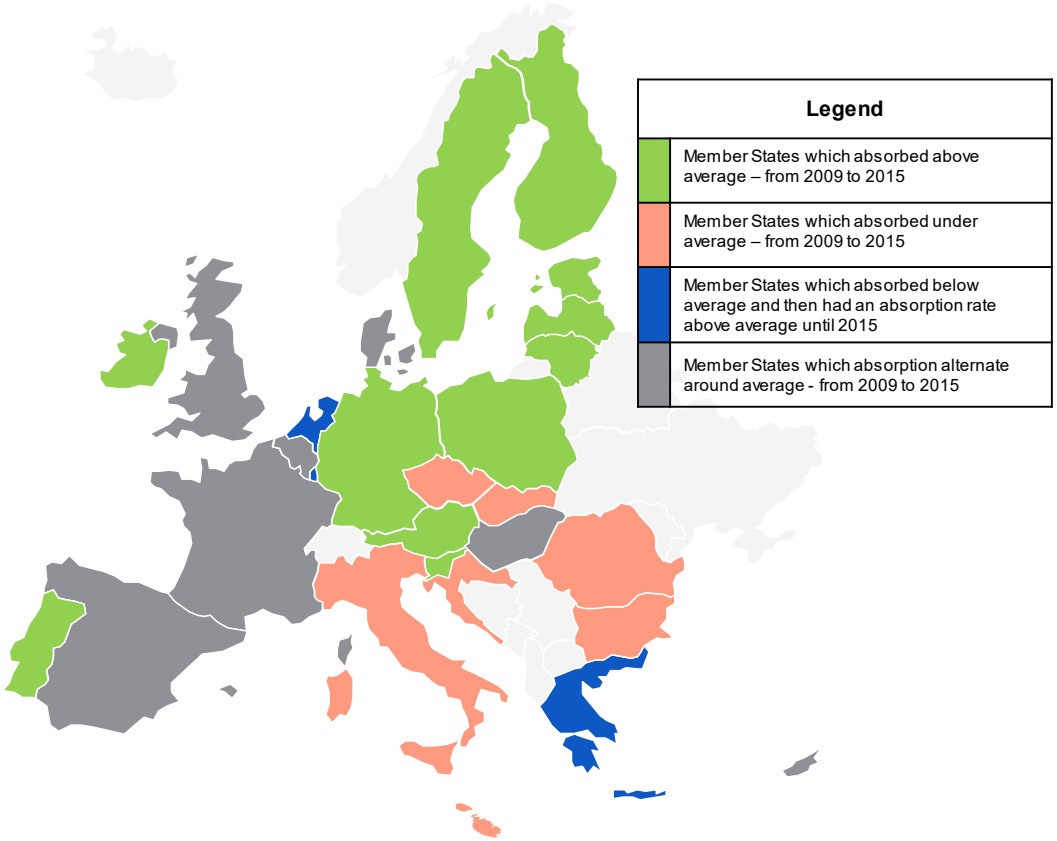
[31] Bulgaria, Estonia, Croatia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia.

[32] See the Court's 2016 annual report, Chapter 2 "Budgetary and Financial Management", paragraphs 2.24-2.25.

Figure 5 – Absorption rate by Member State compared to EU average for the 2007-2013 programme period for the ERDF, ESF and CF



Note: When considering the Member States' absorption pattern for the 2007-2013 programme period we took account of payments made between 2009 and 2015. Payments made during 2007 and 2008 were not included as they are practically only pre-financing payments. Payments made during the 2014 and 2015 were included on the basis of the n+2 rule.

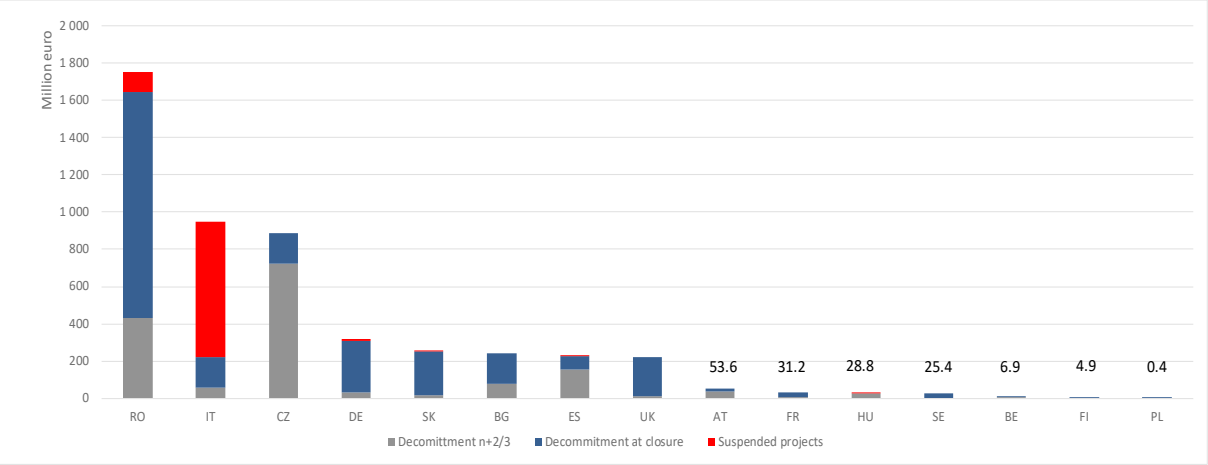
Source: ECA based on Commission data as of February 2018.

28. Based on information available from the Commission at the start of 2018 the average EU absorption rate stood at 97.2 %[33]. Some Member States did not manage to use the funding available within the stipulated time (n+2/3 rule) or did not have sufficient eligible expenditure to claim all allocated funds at closure (see ***Figure 6***). Based on information

[33] The absorption rates is calculated by dividing cumulative payments (332.9 billion euros) by the total commitments for ERDF, CF and ESF (342.5 billion euros). The absorption rate is provisional as the final payment applications are still in the process of being cleared and this will affect the value of cumulative payments.

provided by the Commission unused funding at the end of 2017 amounted to 4.4 billion euros[34]. Projects suspended due to administrative or judicial proceedings amounted to around 853.8 million euros and their absorption by the Member State will depend on the outcome of the proceedings[35]. The final absorption rate and the total value of unused funding can only be confirmed once all OPs have been closed and any financial corrections and recoveries have been determined.

Figure 6 – Unused funding and suspended projects for the 2007-2013 programme period (in million euros)



Note: The table above does not include de-commitments for European Territorial Co-operation OPs amounting to 229.4 million euros.

Source: ECA, based on data provided by the Commission.

The Commission's action to address absorption difficulties was late, but its actions still had an impact on absorption

29. The Commission should monitor on a regular basis the implementation of the budget and take appropriate action when implementation delays are detected. In addition, it should take advantage of lessons learned from previous programme periods to improve implementation of the funds.

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[34] ERDF/CF: 3.5 billion euros; ESF: 0.9 billion euros.

[35] ERDF/CF: 743.5 million euros; ESF: 110.3 million euros.

The Commission monitored the implementation of the budget regularly

30. The Commission has various sources of information for monitoring the implementation of EU funds in the Member States. For the 2007-2013 programme period, the Managing Authority prepared and submitted Annual Implementation Reports (AIR) for each OP to the Commission by 30 June of the following year, starting in June 2008[36].

31. The General Regulation identifies the information to be included in the AIR, namely information on financial implementation, the progress made in reaching the target set, and any significant problems encountered and associated mitigation measures. The information from the AIRs is complemented by statements of eligible expenditure. Member States also reported payment request forecasts biannually. The Commission obtained further information during Monitoring Committee meetings (twice a year on average), annual review meetings and technical meetings.

32. DG EMPL and DG REGIO regularly monitored the financial implementation of the programmes by the Member States, including through a monthly budgetary execution report covering all Member States and OPs. The monitoring took place at EU level, Member State and programme level. Towards the end of the 2007-2013 programme period, the Commission enhanced its monitoring by regularly following up the implementation of the DG's internal Annual Management Plan.

Some Member States took action to address absorption difficulties at a relatively early stage, but the problem persisted

33. Some of the Member States visited had detected difficulties in implementing the Structural Funds relatively early in the programme period and established action plans or took measures to address them. For example, in Italy, Romania and the Czech Republic action plans had been established as early as 2011. At the end of 2014, with one year left to use the available funding, the absorption rate for the ERDF, ESF and CF stood at around 77 % for the EU-28. In the case of Italy, Romania, the Czech Republic, along with Slovakia and

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[36] Article 67 of Regulation (EC) No 1083/2006.

Bulgaria, the absorption rate was well below this level i.e. between 61 % and 68 %, whereas in the case of Croatia[37], the absorption rate was around 46 %.

Although the TFBI was set up late, its results were significant

34. In November 2014, 11 months after the end of the programme period, the Commission[38] set up the Task Force for Better Implementation (TFBI). This was designed to support Member States facing difficulties in implementing their OPs in using the remaining funding from the 2007-2013 period.

35. The TFBI, represented by officials from DG REGIO[39], covered Member States whose overall absorption rate was below the EU average (Bulgaria, Romania, Slovakia, the Czech Republic, Italy and Croatia)[40]. It also covered Hungary, which was at risk of losing funding in 2014 as a result of automatic de-commitment even though its absorption level was close to the EU average. In total, the TFBI concentrated on 38 ERDF and CF OPs. ***Box 3*** provides an outline of the work of the TFBI.

Box 3 – The Task Force for Better Implementation

The TFBI was responsible for drawing up action plans (or reviewing existing plans if already in place) with each Member State concerned with the aim of improving implementation. To this end it identified measures allowed by the legislative framework that could help increase absorption (see paragraph 41 to 78 for a detailed overview of the most significant measures used by the Member States). It organised technical meetings with national authorities to follow-up on the implementation of the action plans, as well as seminars on particular topics (such as closure, major projects and others) with a view to enable exchange of good practices and improve administrative capacities.

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[37] Croatia joined the EU in July 2013 and its eligibility period was up to 31 December 2016.

[38] Press release MEMO/15/4654, 24.3.2015.

[39] DG EMPL provided input to DG REGIO through an assessment on the ESF management systems, was kept informed of the work done and took part in missions to Member States.

[40] The TFBI also covered Slovenia as the absorption rate for the Cohesion Fund part of the Environment and Transport Infrastructure OP was significantly below the EU average.

36. Our examination of technical documents[41] provided by the TFBI to Member States, confirmed that they addressed absorption and risks relating to legality and regularity. However, the documents did not consider how to spend funds well or how to create better outputs and good results.

37. The TFBI had monitored the Member States' progress on the agreed measures. However, the manner in which the Member States reported on their results made it difficult to have an overview of all the measures that were used and the impact of each measure on absorption.

38. However, within the span of one year the absorption rate for the EU-28 increased from around 77 % (December 2014) to almost 90 % (December 2015). The absorption rate for the Member States assisted by the TFBI increased significantly, in some cases by more than 20 percentage points (see ***Table 1***).

Table 1 – Increase in the absorption rate for Member States assisted by the TFBI

Member State	Absorption rate December 2014 (%)	Absorption rate December 2015 (%)	Increase absorption (% points)
Czech Republic	64.4	85.3	20.9
Slovakia	61.7	87.6	25.9
Bulgaria	68.0	87.5	19.5
Italy	63.8	79.9	16.1
Hungary	76.1	88.4	12.3
Romania	62.1	77.0	14.9

Note: Slovenia and Croatia are not included in the table as their situation was not comparable to that of the other Member States (see footnotes 37 and 40).

39. The Member States visited said that they had found the TFBI useful because of the technical guidance and assistance it had provided, in particular on the phasing of major projects (see ***paragraphs 60 to 62***). They also said that it had created a formal forum for addressing implementation problems and had facilitated knowledge-sharing. The Czech

[41] The topics covered are: retrospective projects; phasing; errors in public procurement; contractual advances; major project submission and approval.

Republic and Hungary felt that the TFBI was established too late, as these two Member States had already started taking action to increase absorption.

40. The work of the TFBI finished at the end of 2015. The Commission found the working approach and method of the TFBI effective, and as a result extended them by setting up a permanent unit, the Better Implementation Unit, to help with implementation during the 2014-2020 programme period.

Various measures accelerated absorption but lacked focus on results

41. We looked at the main measures applied by the Member States and their effect on increasing absorption as well as their impact on performance and compliance with the eligibility rules.

42. The EU funding placed at the Member States' disposal should be used in full and in the best possible manner with a view to achieving the OP objectives. To this end, Member States should use the measures allowed by the Regulation with due regard to value for money and regularity of expenditure.

Reprogramming was an effective tool for optimising absorption but resulted in significant changes to the initial plans, presenting risks to value for money

43. Revising (or reprogramming) OPs is an important tool for optimising absorption and avoiding de-commitment i.e. not using the funds. In addition, it provides flexibility to Member States to adapt to changing circumstances on the ground. It was used frequently during the 2007-2013 programme period and resulted in significant changes when compared with the initial financing plan. However, we also noted some risks to value for money associated with the use of reprogramming (see ***paragraphs 53 and 55***).

44. Reprogramming methods include transferring funds between OPs and between priorities (including introducing new priorities or the eliminating existing ones), changing co-financing rates, or changing the public and private component of the national contribution.

45. The following sections (***paragraphs 46 to 59***) discuss the change made to the regulatory framework to ease reprogramming, analyse the impact of reprogramming on initial planning and illustrate the use of each of these reprogramming methods from our sample of 20 OPs.

An amendment to the Regulation made it easier to revise OPs

46. OPs can be revised at the initiative of Member States or of the Commission in agreement with the Member State. The conditions for such revisions as stipulated in Article 33 of the General Regulation, are very broad in scope and provide the Member States with considerable room for manoeuvre. An OP can be revised in the event of: significant socio-economic changes, major changes in EU, national or regional priorities or of an evaluation showing a significant departure from goals initially set, or as a result of implementation difficulties. The Commission must approve or reject the revision of the OP within three months of a Member State formally submitting it. Member States were initially required to carry out an evaluation when revising an OP. This was relaxed in 2010 with the Member States being required to provide an analysis justifying the revision of the OP and its expected impact. This amendment to the General Regulation was meant to facilitate the adaptation of the OPs[42].

Frequent revisions of OPs calls programming into question

47. During the 2007-2013 programme period, reprogramming was used frequently by the Member States. Nineteen out of our sample of 20 OPs were reprogrammed multiple times during the period, sometimes more than once in the same year. Furthermore, we found that for eight of the 20 OPs examined, the interval between two instances of reprogramming was less than five months. For example, one Czech ERDF OP "Enterprises and Innovations" had eight different versions, of which two were submitted in 2013 and another two in 2015.

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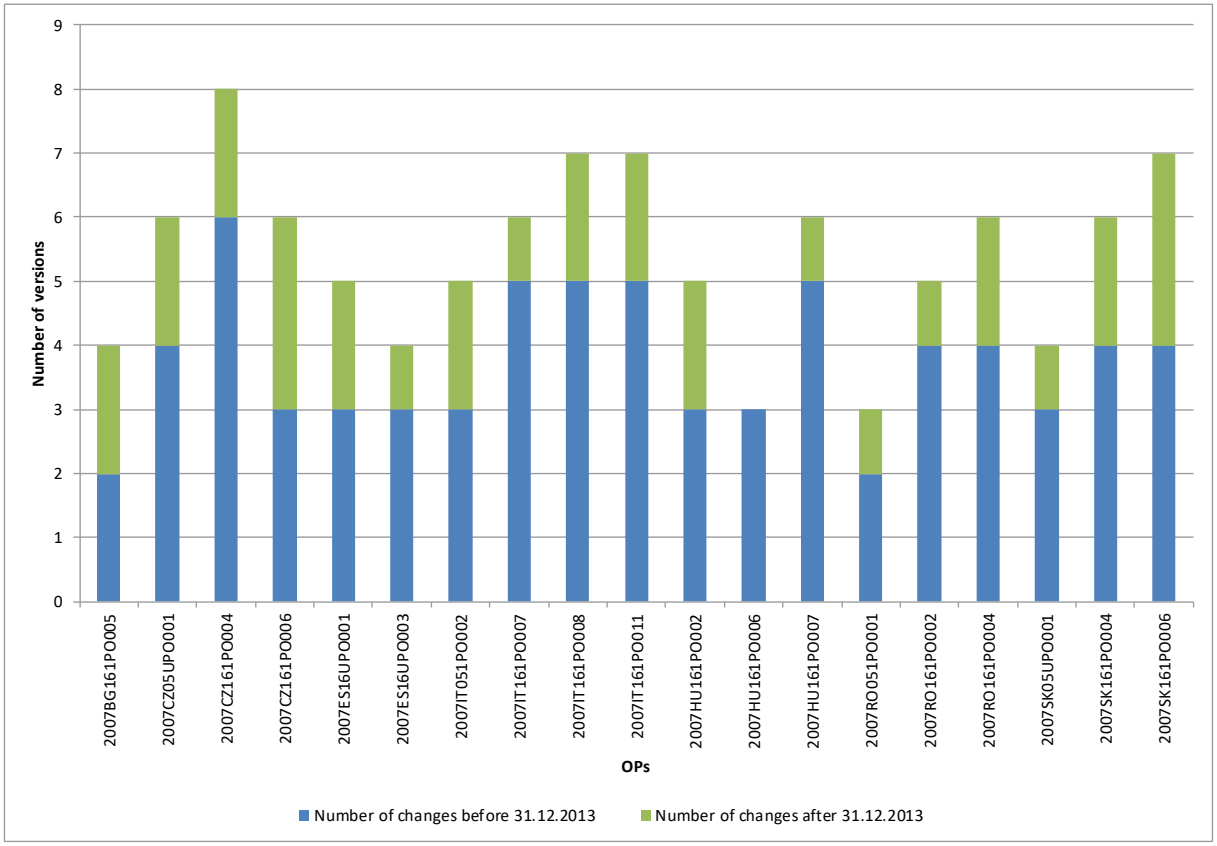
[42] Recital 6 and Article 48(3) of Regulation (EU) No 539/2010 of the European Parliament and of the Council of 16 June 2010 amending Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund as regards simplification of certain requirements and as regards certain provisions relating to financial management (OJ L 158, 24.6.2010, p. 1).

Figure 7 gives an overview of the number of versions submitted for each OP for the 2007-2013 programme period.

Figure 7 – Number of versions submitted for each OP



Source: ECA.

48. Reprogramming enables Member States to realign their operations to take account of changes in circumstances on the ground and changes in EU policies. Nonetheless, the high frequency of reprogramming calls into question the soundness of the analyses underlying the programming process (e.g. the initial needs analysis and ex-ante-evaluation) and subsequent revisions.

Reprogramming resulted in significant changes in the financial allocation to priority axes which was not always reflected in the target values of the performance indicators

49. A frequent type of reprogramming of OPs is to transfer a financial allocation between OPs or priority axes within OPs. This allows Member States to transfer funding towards measures where demand for funding is greater or implementation is easier. In general, a

material change in the financial allocation requires a corresponding revision in the performance indicators and the target values to be able to determine whether the funding invested obtained good value for money.

50. Nine out of the 20 OPs in our sample transferred funds to or received funds from other OPs. For most OPs (eight out of the nine), the transfer was less than 10 % of the initial EU contribution to the OP. However, for one Slovak OP "Competitiveness and Economic Growth", the EU contribution to the OP increased by 25.4 %.

51. Member States also transferred funding between priority axes, which in some cases resulted in significant changes from the initially programmed amounts (see ***Box 4***).

Box 4 - Significant transfers of EU contributions between priority axes

For a Czech ERDF OP "Enterprise and Innovation" funding for Priority 3.2 "Development of Companies" was increased by 52.2 % (from 663 million to over 1 billion euros) and for Priority 3.4 "Innovation" by 35.8 % (from 680.1 million to 923.7 million euros) to accelerate absorption.

For Italian ERDF OP "Sicily" funding for Priority 6 "Sustainable Urban Development" increased by 17.5 % (from 539.5 to 634 million euros) to help speed up absorption.

52. In one Hungarian OP changes in the financial allocation did not result in a change in the target value of the performance indicator (see ***Box 5***).

Box 5 – Significant transfers of EU contribution between priority axes without proportional adjustment of target value of the performance indicator

The Hungarian ERDF OP for Environment and Energy was revised four times. In 2012, a transfer was made from another OP, whereas in 2013, 2015 and 2016, transfers between priority axes were made. Funds were reallocated to priorities with projects which could be implemented faster. As a result the EU contribution to Priority 5 "Efficient Energy Use" was increased by 390 % (from 131.2 to 642.6 million euros). At the same time, the target value for the indicator 'energy resources saved through energy efficiency' was reduced in 2012 to less than a third from 11 to 2.7 petajoules per year, but was not reviewed when additional funding was allocated to the priority axis.

53. The examples above illustrate that the focus on absorption and spending the money fast pose a risk to achieving better results when disbursing EU funds.

Increasing the EU co-financing rate boosts absorption but reduces the value that can be obtained from EU funds

54. Increasing the EU co-financing rate helps Member States speed up the absorption rate and reduces the amount of funds at risk of de-commitment. In this way, a Member State can be reimbursed at the revised rate for all previously declared expenditure. Increasing the co-financing rate allows the immediate and quick absorption of funds with retroactive effect.

55. An increase in the co-financing rate eases pressure on the national budget as the Member State's initial planned contribution to the OP is reduced, however it reduces the overall value of the OP. This means that the scale (number or size) of the interventions is also reduced, unless Member States continue to invest the funding originally planned at national level. As a result this may have a negative impact on objectives and results that can be achieved by the OPs which in turn affects the value that can be achieved by the disbursed EU funds.

56. More than half of the OPs in our sample (11 OPs out of 20) were programmed from the start at the maximum EU co-financing rate laid down in the Regulation[43]. For eight OPs, the co-financing rate was increased during the period. ***Table 2*** shows the increase in the EU co-financing rate and the decrease in the national contribution. For these eight OPs the total reduced national contribution amounts to 4.8 billion euros.

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[43] Annex III to Regulation (EC) No 1083/2006.

Table 2 – Decrease in national contribution as a result of increase in the co-financing rate

Member State	Operational Programme	Initial EU co-financing rate *(in %)*	Revised EU co-financing rate *(in %)*	Decrease of national contribution *(in million euro)*
Romania	Environment	80	85	302.1
Bulgaria	Environment	81	85	75.5
Spain	Research, Development and Innovation (R&D&I) for and by Enterprises – Technology Fund	67	75	356.8
	Knowledge-based economy	70	80	259.0
Italy	Calabria FSE	50	75	286.8
	Security for development	50	75	386.0
	Calabria	50	75	999.4
	Sicily	50	75	2 179.8
	Total			4 845.4

Note: The regulatory maximum EU co-financing rate is 85 % for Bulgaria and Romania, 80 % for Spain and 75 % for Italy.

Source: ECA.

Member States introduced private contributions to increase their rates of absorption, but this also resulted in reduced interventions

57. The Member States' share of national co-financing may either be provided through a national public contribution only or may also contain a private contribution. Where the programme contains a private contribution, the OP financing plan[44] takes into account the funding provided by private sector grant recipients.

58. An increase in private contributions can help absorb funding quicker as they complement national public expenditure to be reimbursed as part of EU co-financing and/or replace the national public contribution needed to match the EU co-financing. The effect is immediate and has a one-off positive impact on absorption of EU funds by increasing the amount of eligible expenditure available for reimbursement. However, since part of the private contribution is expenditure that would have been incurred irrespective of the public contribution, the replacement of the public contribution with the private reduces overall the

[44] Article 37(e) of Regulation (EC) No 1083/2006.

Member States' investment. As indicated above (see ***paragraph 55***) this reduces the scale of intervention to achieve the Cohesion policy objectives.

59. At the start of the programme period none of the 20 OPs in our sample included a private component in their OP financing plan. By the end of the programme period five OPs introduced a private contribution, thereby reducing the national public contribution at the same time. ***Table 3*** shows the private contribution introduced and the theoretical EU contribution that this could release.

Table 3 – Private contribution replacing the public contribution and theoretical EU contribution generated

Member State	**OP**	**Private contribution introduced** *(million euro)*	**Co-financing rate** *(%)*	**Theoretical EU contribution generated by private contribution** *(million euro)*
Spain	Research, Development and Innovation (R&D&I) for and by Enterprises – Technology Fund	500.5	75	375.4
Czech Republic	Enterprises and Innovations	472.5	85	401.6
	Environment	97.2	85	82.7
Hungary	Environment and Energy	85.1	85	72.3
	North Hungary	54.2	85	46.0

Note: The theoretical EU contribution generated by including private expenditure is calculated by applying the EU co-financing rate to the private contribution. The final contribution generated by private expenditure will be known only at the time of closure.

Source: ECA, based on the data provided by the Commission.

Phasing of projects reduces the risk of de-commitment if projects are not entirely completed at closure

60. The 2007-2013 regulatory framework provided for the implementation of a major project[45] over two programme periods, i.e. dividing a project into two stages, between the 2007-2013 and 2014-2020 programme periods[46]. Although the General Regulation provided only for the phasing of major projects, the Commission's closure guidelines went even further, extending the principle of phasing to non-major projects with a value of at least 5 million euros[47].

61. The benefit of phasing is that it reduces the risk that on-going major projects which are non-functional by 31 March 2017 (i.e. the date for submitting closure documents), or by 31 March 2019 at the very latest[48], are considered ineligible and the corresponding EU funding is not used. Nine out of 14[49] OPs in our sample opted to phase major projects or projects above 5 million euros. The use of phasing reduced the risk of EU co-financing for these projects of 4.5 billion euros (3.8 billion euros for major projects and 0.7 billion euros for non-major projects over 5 million euros) would not be used in the 2007-2013 programme period.

62. While phasing is beneficial to absorption and acknowledges that on-going project implementation does not stop at programme end, a recent audit revealed that phasing in

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[45] Major projects comprise an economically indivisible series of works, activities or services fulfilling a precise technical function and having clearly identified aims and whose total cost exceeds 50 million euro, or 75 million euro in the case of a transport project. The Commission's approval is required at individual project level.

[46] Article 40(d) of Regulation (EC) No 1083/2006.

[47] C(2015) 2771 final.

[48] C(2015) 2771 final.

[49] Fourteen out of 20 OPs in our sample had major projects or projects over 5 million euro.

Cohesion is more complicated and restrictive than in Rural Development policy, even though the policy areas are very similar[50].

Retrospective projects were used to absorb EU funding but represent a considerable risk of deadweight

63. Retrospective projects or operations are those which have incurred expenditure or are completed before EU co-financing has been formally applied for or awarded, i.e. they are financed retrospectively. Retrospective projects are another means of absorbing funding by creating additional new expenditure or by substituting ineligible expenditure.

64. There are clear risks to value for money with retrospective projects as they are often selected, initiated or carried out without having been expressly linked to a programme's objectives or to specific legal requirements linked to EU assistance. In its guidance on retrospective EU assistance[51] the Commission discourages their use as they entail a high risk of non-compliance with the relevant Union and national rules.

65. In addition, as retrospective projects are already implemented with national funding, this raises doubt as to the added value of using EU funding to co-finance these projects. It also poses a risk of deadweight, since these projects would have been implemented even without the EU funding.

66. Of the four Member States we visited, three (Italy, Hungary and Romania) stated that they used retrospective projects (see ***Box 6***).

Box 6 – Use of retrospective projects and expenditure

The Managing Authority for the Italian OP "Sicilia" indicated that in 2014 total eligible cost for retrospective projects amounted to 437.3 million euros. For 2015 it estimated that such expenditure would potentially amount to 250 million euros.

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[50] Special Report No 36/16 "An assessment of the arrangements for closure of the 2007-2013 cohesion and rural development programmes", Table 5.

[51] COCOF 12/0050/01.

In the case of two Hungarian OPs "Transport" and "Environment and Energy" the national authorities indicated that the retrospective projects identified amounted to a total eligible cost of 195.1 million euros and 74.5 million euros, respectively.

For the Romanian OP "Human Resources and Development" the national authorities indicated that seven retrospective projects were identified with a total eligible cost of 166.7 million euros. To finance these projects, a total of 110 million euros was transferred from certain priority axes towards the priority axis in which the retrospective projects could fit.

67. Member States are not obliged to report to the Commission on the expenditure declared retrospectively. As a result, the Commission is not aware of the volume and financial impact of expenditure declared retrospectively, despite the clear risks to such funding. Our work undertaken for the statement of assurance shows that many Member States use retrospective expenditure and that EU co-financing of retrospective projects is likely to be significant for the 2007-2013 period.

68. As part of our work for the 2015 Annual Report, we identified errors relating to expenditure on retrospective projects (see ***Box 7***). In a previous report the Court has said that such projects are more error-prone than those selected in the normal way[52].

Box 7 – Ineligible expenditure incurred by retrospective project

An Italian project to improve the sewage system in a municipality was approved and financed with national resources. The project expenditure amounting to 2.5 million euros was subsequently included under the OP "Campania" as a project for retrospective co-financing.

During our audit, we identified a change in the scope of a public procurement contract resulting in a breach of the relevant provisions. Consequently, nearly 30% of the declared expenditure was considered ineligible and should have not been declared for co-financing.

69. For the 2014-2020 programme period, the use of retrospective projects has been restricted somewhat. Operations (consisting of one or several projects) that have started to

[52] Paragraph 6.19 of the 2008 annual report, Chapter 6 "Cohesion".

incur expenditure but have not been physically completed or fully implemented before the beneficiary submits the application for funding under the programme to the Managing Authority may be eligible for EU funding[53]. However, the risk of ineligible expenditure as well as the question of the added value of the EU co-financing remain.

Even though the eligibility period was extended, 8 % of endowments to financial instruments were not used and had no revolving effect

70. During the 2007-2013 programme period Member States could absorb money temporarily by paying it into a financial instrument and receiving reimbursement from the Commission, thereby avoiding the risk of de-commitment during the implementation phase. In addition, to help improve absorption, the eligibility period for disbursements from financial instruments to final recipients was extended by the Commission from 31 December 2015 to 31 March 2017[54]. This resulted in additional payments to final recipients of 1.6 billion euros[55]. The Court has reported on this issue in previous reports[56].

71. An important advantage of using financial instruments is their revolving effect, i.e. the possibility that endowments to financial instruments can be used more than once. Therefore it is important that full endowments to financial instruments are used during the programme period to enable the revolving effect to materialise.

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[53] Article 65(6) of Regulation (EU) No 1303/2013.

[54] C(2015)2771 final.

[55] Summary of data on the progress made in financing and implementing financial engineering instruments reported by the managing authorities in accordance with Article 67(2)(j) of Regulation (EC) No 1083/2006: Programming period 2007-2013 Situation as at 31 December 2015, European Commission, EGESIF 16-0011-00, 20/09/2016.

[56] See Special Report 19/2016 "Implementing the EU budget through financial instruments – lessons to be learnt from the 2007-2013 programme period", paragraphs 42 to 44 and Chapter 6 of the 2014, 2015 and 2016 annual reports.

72. We have previously reported that low disbursement rates in particular in the first years of the 2007-2013 programme period limited the revolving effect[57]. In October 2017, the Commission has reported on the financial implementation as at 31 March 2017 (at closure) for financial instruments. A desk review of the figures in this report revealed a number of inconsistencies and inaccuracies in the Member States' reporting[58]. As the closure process is still on-going, the Commission should be in a position to verify the reliability of the figures used to close the OPs.

73. Nonetheless, on the basis of the data reported by Member States to the Commission at closure, we estimate that approx. 8% (i.e. 0.9 billion out of 11.3 billion euros) of endowments to financial instruments had not been used by the deadline of 31 March 2017 and must be returned to the OPs[59]. These funds could be transferred from the priority axis of the under-performing financial instruments to another priority axis provided that sufficient excess expenditure is available in line with the 10% flexibility rule set out in the closure guidelines. For those OPs where these conditions are not met, the funds returned to the OP (or part of those) must be paid back to the EU budget. For the funds returned to the OPs, no revolving effect had occurred and, but the management fees incurred thereupon even though in accordance with the financial agreements, did not provide any added value to the EU Budget.

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[57] See Special Report 19/2016 "Implementing the EU budget through financial instruments – lessons to be learnt from the 2007-2013 programme period", paragraphs 95 and 96 and the 2014, 2015 and 2016 annual reports.

[58] Summary of data on the progress made in financing and implementing financial engineering instruments reported by the managing authorities in accordance with Article 67(2)(j) of Regulation (EC) No 1083/2006: Programming period 2007-2013 Situation as at 31 March 2017 (closure), European Commission, EGESIF 17-0014-00, 20/09/2017.

[59] Summary of data on the progress made in financing and implementing financial engineering instruments reported by the managing authorities in accordance with Article 67(2)(j) of Regulation (EC) No 1083/2006: Programming period 2007-2013 Situation as at 31 March 2017 (closure), European Commission, EGESIF 17-0014-00, 20/09/2017.

Contractual advances made towards the end of the eligibility period may pose risks to value for money and compliance

74. Contractual advance payments are a common market practice, enabling the contractor to cover initial expenditure for mobilising the resources necessary for delivering the services or works contracted. According to the Commission, such advances are typically in the range of 10 % to 40 % of the contract value.

75. A contractual advance payment is eligible if it was paid to the contractor by 31 December 2015 and converted into actual expenditure before 31 March 2017. It should also be compliant with national rules and contractual obligations. However for projects approved towards the end of the eligibility period (i.e. 31 December 2015) the need to finalize the projects by the closure deadline (i.e. 31 March 2017) may result in allocation of funds to projects based on their capacity to spend quickly rather than on their ability to provide results.

76. Of the four Member States we visited, two (the Czech Republic and Hungary) used contractual advances to increase absorption. For example, the Czech Managing Authority indicated that as of September 2016, for OP "Environment", total advance invoices amounted to 133 million euros in EU contributions. This represented around 5 % of total absorption in 2014 and 2015 (see ***Box 8***).

Box 8 – advances amounting to a high percentage of contract value

For the Czech OP "Environment" contractual advances were used to avoid de-commitment and improve absorption. Between November 2013 and March 2016, the national rules were gradually relaxed, and beneficiaries were encouraged to use advance and supported in doing so. In 2014 and 2015 contractual advances up to 90 % of the contractual value were permitted without supporting clearing invoices. After November 2015, advances of 100 % of the contract value were permitted although the National Authorities indicated that no certification was possible without proof of settlement of invoices. This goes beyond what the Commission identified as market practice (see ***paragraph 74***). In terms of absorption, the high percentage of contract value increase the risk that the advance will not have been used by the deadline, possibly resulting in EU funding being either lost or incorrectly paid out.

77. We have previously reported that the declaration of contractual advances, especially where these represent a high percentage of the contractual value, introduces a risk of ineligible expenditure at the time of closure. Since advances could be turned into actual expenditure until 31 March 2017, the closer the actual expenditure is to the deadline the less the time available for audit authorities to verify it and provide assurance to its eligibility[60].

78. Member States were obliged to monitor contractual advances however they were not required to report to the Commission on this. As a result the Commission is not in a position to know their overall use and impact. At the time of the audit we found that Hungary did not monitor the use or impact.

Overall the error rate fell since 2007 for Cohesion even though retrospective projects led to some errors

79. We looked at the developments in the Cohesion control framework during the 2007-2013 programme period and how this impacted on the error rate. We also looked at whether the focus on absorption particularly towards the end of the programme period resulted in more errors.

80. Our examination of the error rates reported by the Court since 2007 shows a significant reduction in the error rate for 2007-2013 expenditure compared to the previous programme period. The error rate was consistently lower from 2011 to 2016 resulting in a most likely error rate of 4.8 % in 2016 (lower error limit of 3.1 % compared to 11 % in 2007 and 2008 for payments from the 2000-2006 period).

81. The development in the error rate can be attributed to a number of factors. As indicated above, some measures to improve absorption such as the use of retrospective projects (see ***Box 7***) resulted in some errors. On the other hand, other significant factors such as overall improvements in the Member States' management, control and supervisory systems and the

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[60] Special Report No 36/16.

Commission's use of preventive (interruptions and suspensions) and corrective measures for the 2007-2013 programme period have led to a reduction in the error rate.

CONCLUSIONS AND RECOMMENDATIONS

82. For Cohesion policy the maximum level of expenditure under the MFF is broken into yearly allocations of funds per Member State. Such allocations facilitate the programming process and allow for the ex-ante setting of targets within OPs. However, the Court noted, that it is a challenge to obtain good results from schemes where funds are pre-allocated to Member States and the absorption of funds receives primary focus, thus becoming an objective in itself. To maintain a focus on achieving good results, it is crucial that Member States avoid a situation where a significant amount of funds remain to be absorbed at the end of the programme period, since the rush to absorb funds may lead to insufficient consideration to value for money. Thus, while absorption is important in order to achieve policy objectives, it is not an end in itself.

83. For the last two programme periods the late adoption of the legislative framework meant late adoption of the OPs. This had an inevitable knock-on effect on the implementation of the allocated funds and low level of payments in the first years. The Commission has encouraged an early political agreement on the post-2020 MFF in order to provide legal and financial certainty to the national and regional authorities and enable implementation to start immediately at the start of the programme period (see ***paragraphs 16 to 19***).

84. Beside the knock-on effect mentioned above, an additional explanation for the slow start in spending is that, half way through the programme period, Member States were still using funds from the previous programme period (see ***paragraph 22***). This is why, in a previous special report, we recommended that the Commission should ensure, in its legislative proposals for the post-2020 period, that eligibility periods no longer overlap with the

subsequent programme period and that the closure procedure is finalised promptly after the end of the eligibility period[61].

85. To achieve a smooth and stable implementation throughout a programme period, actions to address slow absorption should be taken early. Some Member States and the Commission identified difficulties in absorbing funding relatively early in the 2007-2013 programme period. However, the Commission only took a comprehensive set of actions in November 2014, almost one year before the end of the eligibility period, by setting up a Task Force to assist Member States whose absorption rates were below the EU average (see ***paragraph 34 to 35***).

86. The Member States used several measures, including those identified by the TFBI and in the span of one year managed to increase their absorption rate in some cases by more than 20 percentage points. At the start of 2018 the average EU absorption rate stood at 97.2 %. Several Member States did not manage to use all the funding available and unused funding at the end of 2017 amounted to 4.4 billion euros. The final absorption rate and the final value of unused funding will be known once closure is complete (see ***paragraph 28***).

87. Our work showed that the actions taken by the Commission and Member States to tackle slow absorption focussed mainly on absorption and legality but did not take due account of performance considerations. For some of the measures used, from our sample we found that:

- OPs were revised frequently, resulting in significant changes from the initial plans and calling into question the soundness of the analyses underlying the programming and the ability to achieve the OP and Cohesion policy objectives (see ***paragraph 43 to 59***).

- The Member States visited had identified retrospective expenditure amounting to approximately one billion euros. The value of these projects for all 2007-2013 OPs is likely to be significantly higher. These types of projects have a high risk of

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[61] Special Report No 36/2016.

deadweight (could have been implemented without EU funding) and thus limited EU added value (see ***paragraph 63 to 69***).

- Advances, such as endowments in financial instruments, helped to boost absorption during the programme period but slow implementation reduced their revolving effect. Around one billion euros were not used by the end of the eligibility period. Thus these funds had no revolving effect and the management fees incurred thereupon, even though in accordance with the financial agreements, did not provide any added value to the EU budget (***paragraph 70 to 73***).

- Contractual advances also helped improve absorption. However for projects approved towards the end of the eligibility period the need to finalize the projects by the closure deadline may result in allocation of funds to projects based on their capacity to spend quickly rather than on their ability to provide results. Moreover the closer the actual expenditure is to the eligibility deadline the less the time available for Audit Authorities to verify its eligibility (see ***paragraphs 74 to 78***).

88. The TFBI had monitored the Member States' progress on the agreed measures to improve absorption. However, the manner in which the Member States reported on the results made it difficult to have an overview of all the measures that were used and the impact of each measure. For some of the measures (e.g. retrospective co-financed projects, use of contractual advances) the legislative framework does not require Member States to report to the Commission. These two factors hampered its ability to get a comprehensive overview of the measures used and their individual financial impact (***see paragraph 37, 67 and 78***).

89. Although the pressure to spend money towards the end of the 2007-2013 period resulted in some errors, the estimated error rate for Cohesion was consistently lower from 2011 to 2016, compared to 2007 and 2008. This may be due to the net effect of multiple factors (see ***paragraphs 80 to 81***).

90. For the 2014-2020 programme period implementation of the OPs started more slowly compared to the previous programme period. This, together with the fact that implementation difficulties were also encountered in the 2007-2013 period it is likely that

Member States will also encounter absorption difficulties in the current period (see ***paragraph 23 to 26***).

Recommendation 1 – a timetable for legislative framework and programme documents
The Commission should prepare a timetable which includes key milestone dates (e.g. the proposal and adoption of the legislative framework) with a view to ensure that OP implementation starts on time, at the beginning of the programme period. The Commission should propose such a timetable to the Council and the European Parliament with a view to reaching an agreement on it. **Target implementation date:** Immediately (for the post-2020 legislative framework).

Recommendation 2 – well supported requests for revision of programmes (including impacts on results)
The Commission should ensure, prior to the adoption of its decisions revising operational programmes where key elements of performance are affected, that: (a) the request is based on a sound and comprehensive underlying assessment of the implementation of the OP and partnership agreement and the related needs at the time of revision; and (b) the revision is primarily undertaken to provide better results and that changes in the level of funding for priorities are reflected in performance indicators. **Target implementation date:** Applicable to future OP revision requests by Member States.

Recommendation 3 – means to obtain information allowing better monitoring of absorption
The Commission should ensure that it has the means to: (a) obtain the information necessary to undertake a thorough and comprehensive monitoring of absorption by OP; (b) identify the causes for both slow and rapid absorption, bearing in mind that expenditure should be legal and regular and the importance of funds being spent effectively; and (c) assess ex ante the need and the impact of measures to increase absorption in order to decide whether or not to use them. **Target implementation date:** By end 2018 for (a) and (b). By end of 2020 for (c).

Recommendation 4 – focus on performance and delivery of good results
The Commission should ensure that, when it provides Member States and OPs with targeted support to accelerate implementation of the 2014-2020 programme period (such as when revising OPs), actions are undertaken with a focus on delivering good results. **Target implementation date**: Immediately.

This Report was adopted by Chamber II, headed by Ms Iliana IVANOVA, Member of the Court of Auditors, in Luxembourg at its meeting of 30 May 2018.

For the Court of Auditors

Klaus-Heiner LEHNE

President

Annex

List of Operational Programmes selected for review

Member State	Operational Programme	Fund	Covered by the TFBI
Bulgaria	**Environment** (2007BG161PO005)	CF&ERDF	x
Czech Republic[1]	**Environment** (2007CZ161PO006)[2]	CF&ERDF	x
	Central Bohemia (2007CZ161PO009)	ERDF	
	Enterprises and Innovations (2007CZ161PO004)	ERDF	
	Human Resource and Employment (2007CZ05UPO001)[2]	ESF	
Hungary[1]	**Environment and Energy** (2007HU161PO002)[2]	CF&ERDF	x
	North Hungary (2007HU161PO006)	ERDF	
	Transport (2007HU161PO007)[2]	CF&ERDF	x
Italy[1]	**Calabria** (2007IT161PO008)	ERDF	x
	Security for development (2007IT161PO007)[2]	ERDF	
	Sicily (2007IT161PO011)[2]	ERDF	x
	Calabria FSE (2007IT051PO002)	ESF	
Romania[1]	**Sectorial Development of Human Resources** (2007RO051PO001)[2]	ESF	x
	Increase in Economic Competitiveness (2007RO161PO002)[2]	ERDF	x
	Environment (2007RO161PO004)[2]	CF&ERDF	x
Slovakia	**Competitiveness and Economic growth** (2007SK161PO006)	ERDF	x
	Transport (2007SK161PO004)	CF&ERDF	
	Education (2007SK05UPO001)	ESF	x
Spain	**Research, Development and Innovation (R&D&I) for and by Enterprises – Technology Fund** (2007ES16UPO001)	ERDF	
	Knowledge-based economy (2007ES16UPO003)	ERDF	

[1] Member States visited on-the-spot.
[2] OPs reviewed in-depth.

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

"COMMISSION'S AND MEMBER STATES' ACTIONS FOR THE 2007-2013 PROGRAMMES TACKLED LOW ABSORPTION BUT HAD INSUFFICIENT FOCUS ON RESULTS"

EXECUTIVE SUMMARY

I. The Commission monitors implementation at Member State and programme and where necessary at project level as well. As part of implementation, the Commission also follows closely the financial implementation, paying particular attention to EU payments to programmes. The data transmission arrangements for 2014-2020 enable the Commission to have a reliable and up-to-date picture on the overall implementation including the outputs and results the programmes deliver.

III. The adoption date of the legislative framework strongly depends on the co-legislators; for the 2021-2027 period, the Commission presented its proposal 30 months before the planned start of the eligibility period. The Commission underlines that while early adoption is important in relation to starting programme implementation, there are also other factors in terms of performance and absorption over the period – the n+2/3 regime, the level of pre-financing or requirements in terms of designation have a higher effect.

IV. Programmes approved relatively late compared to the average can still easily catch up depending on the circumstances and achieve better than average absorption levels by the end of the period. The n+2 rule enforces a stronger budgetary discipline and incentivises faster budgetary implementation. A list of ready-to-implement projects is also an important success for programme performance and absorption.

V. The Commission is satisfied with the results of the initiative "Task Force for Better Implementation". The funds at risk at the end of 2014 stood in the range of EUR 10-13 billion and the decommitment amount was brought below EUR 5 billion by closure. The Commission assists Member States in spending the available funds which led to an absorption level of 97% for the 2007-2013 – which is 2 pp above the levels for 2000-2006.

VI. The Commission proposed measures to Member States being at risk of absorption which were in line with the 2007-2013 legal framework and were adapted to the circumstances of the Member States and the particular programmes. They were also in line with the programme objectives, including its indicators, intervention logic and the selection procedures applied by the programme, etc. Therefore there appeared to be no need for any exceptional consideration for results only for safeguards that the proposed results are indeed delivered. It is standard programme management practice that when a programme shows indication of a lower absorption rate, the actions taken to address these issues focus on absorption within the existing targets. The Commission also considers flexibility being an important feature of cohesion policy. Programme amendments are crucial to reflect the changing circumstances, emerging challenges, new or adjusted priorities for programmes covering a decade-long period.

VII. The Commission has a detailed overview of the programmes and measures applied in those as part of regular programme management throughout the period. When necessary, the Commission gathers information related to issues important for programme management where these are not part of the regular reporting.

VIII.

First indent: The Commission accepts this recommendation.

Second indent: The Commission accepts this recommendation.

Third indent: The Commission accepts this recommendation.

Fourth indent: The Commission accepts this recommendation.

AUDIT SCOPE AND APPROACH

Box 1 - Absorption is a means to achieve results and not an end in itself

The Commission has already replied to this finding in the ECA Annual report in 2013 and stated that:

"*the Commission notes that the performance criteria are built into the process of selecting each project to be funded. Through the application of weighted selection criteria Member States should be able to identify the projects that could best contribute to the achievement of results*."

For the 2014-2020 period the legal framework increased focus on performance with the introduction of thematic concentration requirements, the performance framework and reserve and ex-ante conditionalities. The political agreement on the Commission's Omnibus proposal further enhanced the possibilities to pay based on predefined results, conditions being met or results being delivered[1].

OBSERVATIONS

14. The Commission points out also that in parallel to the negotiation of the legal framework, it starts informal programme negotiations in order to make progress by the time the legal framework is adopted. In 2014-2020, this process was based on Position Papers established per Member State.

16. The Commission underlines that the adoption date of the legislative framework is mostly determined by the co-legislators.

For the 2021-2027 period the Commission presented its proposal 30 months before the planned start of the eligibility period. Nevertheless, the Commission is not in a position to control the pace of adoption of the legislative proposals by the co-legislators.

19. The Commission underlines that while early adoption is important in relation to programme implementation, there are other important factors in terms of absorption over the period. Programmes adopted relatively late compared to the average can achieve better than average absorption levels by the end of the period.

Whether programmes are subject to a n+2 or a n+3 rule is a more decisive factor in terms of the absorption level achieved by the end of the programming period.

Box 2 – 2007-2013 and 2014-2020 OPs adopted after the programme periods had started

The Commission notes that its performance on the negotiations and adoption of programmes in comparison with the previous programming period can also be assessed by comparing the first 12 months following the adoption of the legal framework. Using the period of 12 months from the adoption of the relevant legislative packages in both periods would offer a more accurate picture. This would mean that in 2014-2020, in the first 12 months after the adoption of the regulation 40 % of OPs were adopted, in comparison to 6% of OPs in the same timeframe of the 2007-13 programming period.

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[1] COM (2016) 605 of 14.9.2016, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financial rules applicable to the general budget of the Union.

21. The Commission considers that absorption (defined in terms of EU payments) is slower given that the overall pre-financing amounts in 2014-2020 are significantly higher than in 2007-2013. This does not incentivise Member States to submit payments claims, in particular as to this end designation had to be completed. The change of n+2 to n+3 rule for 2014-2020 does not incite the rapid submission of payment claims either. This explanation is underpinned by the fact that the project selection rate in Member States is comparable across the two programming periods up to now.

22. The Commission considers that the overlap of eligibility periods is one of several factors contributing to the delay in implementation of the subsequent period. Other important factors interplay such as the level of pre-financing and the n+ rule. These factors influence strongly the absorption as perceived through EU payments but not the actual level of implementation on the ground.

23. The Commission does not see a higher absorption risk at the end of the programme period for 2014-2020 than for 2007-2013. Taking into account n+3 and current selection rates as well as payments certified by beneficiaries the Commission considers that potentially the same level of absorption could be achieved for 2014-2020 as for 2007-2013. The Commission also notes that the annual accounts procedure was introduced in the 2014-2020 legal framework (requiring Member States to get accustomed to it) and that the relatively high level of pre-financing does not give a sufficient incentive to accelerate the submission of EU payment claims.

25. In 2016, the Commission put in place a close monitoring system for the 2014-2020 programmes that appear to be progressing slowly.

26. The Commission considers that the quality of projects may not necessarily be linked to the level of outstanding commitments. The Commission refers to its reply paragraph 2.14 of ECA's 2016 annual report.

28. While absorption can always be improved, the Commission considers that the average rate of 97% is comparable to the earlier periods and is satisfied with this result. To be more precise, this level of absorption exceeds the rate recorded for the ERDF and ESF programmes for the 2000-2006 period (96%).

The work of the Task Force for Better Implementation and its cooperation with the relevant Member State authorities had a positive impact on the de-commitment and the rate of absorption.

34. The Commission highlights that it took a number of actions for Member States at risk of absorption earlier than this date on the basis of intense bilateral policy dialogues. The coordinated high- level political action covering all Member States at risk in a systematic manner started 14 months before the end date for eligibility.

36. The actions were mostly concentrated on the management of already selected projects or calls planned to be launched. Therefore the principal aim was to safeguard the strategic objectives of the programmes.

37. The Commission refers to its reply to Box 1.

39. The Commission notes that the first guidance on phasing of major projects was issued already in 2012 and presented to the MS during the COCOF meeting (COCOF_12-0047-02-EN). The rules have been further explained in the closure guidelines issued in 2013 and amended in 2015 to provide legal certainty to Member States.

47. The Commission is of the view that reprogramming is a necessary tool to ensure flexibility in relation to interventions defined in the programmes for a period of almost a decade.

A number of detailed elements require a programme amendment according to the regulatory framework and Member States cannot avoid undertaking those. This enables the Commission to ensure that the focus of interventions is kept and the basis for programme implementation remains sound (cf. elements listed under Article 37 of the General Regulation and those that are part of the approved programme).

It is up to the Member States to decide how much additional information is included in their programmes compared to the bear minimum legally required. A higher number of details (about beneficiaries, target groups, major projects etc.) require a more frequent amendment, without putting the strategic orientation into question.

49. In 2014-2020 all performance-related changes in programmes are carefully screened by the Commission and the soundness of the justification is thoroughly assessed by geographical units in cooperation with the evaluation competence centre/evaluation unit. Whenever changes are made in the level of funding, consideration is given to whether indicators need to be changed as well.

52. The reduced target value was already included in the first modification in 2012, based on a review of the indicators undertaken by the Hungarian authorities and presented to the monitoring committee in November 2011. The experience of the first calls showed that the results of investments were lower than estimated when the OP was drafted and needed to be brought in line with reality.

The final report states that at least 4.6 petajoules have finally been saved. This is less than planned in 2007, but double the amount of the planned result from 2012, in line with the budget doubling compared between 2012 and 2016.

Box 5 – Significant transfers of EU contribution between priority axes without proportional adjustment of target value of the performance indicator

There was a first modification in 2012 (C(2012) 6310)). It reduced the target to 2.7 petajoule, based on the experiences in 2011 (justification available in SFC 2007) when it turned out that the target was far overestimated compared to the results of concrete first projects approved and implemented during 2011. The budget was increased in 2012. The target was maintained despite the additional budget allocated later on.

Common Commission reply to paragraphs 55 and 56:

The legal framework allows Member States to increase the EU co-financing up to a maximum level. Had Member States programmed up to the highest possible level the EU co-financing rate from the outset the total budget available for cohesion policy would have been significantly lower than the amount finally programmed for 2007-2013.

58. The Commission stresses that the end of the 2007-13 period corresponded to the post-crisis era of austerity in public budgets/investments. Therefore, including private contributions and increasing EU co-financing levels was an important element which allowed the continuation of programme implementation. The legal framework allows Member States to change from public to total cost base. The Member States could have programmed from the outset interventions on a total cost base. Had they done so the total budget available for cohesion policy would have been significantly lower than the amount finally programmed for 2007-2013.

60. The Commission refers to its reply to paragraph 91 to ECA's SR 36/2016 on Closure.

63. For the period 2007-2013, the Commission listed the rules to which particular attention should be paid by the managing authorities in case they include retrospective operations in the operational programmes (see COCOF note 12-0050-01). The Commission has also raised awareness to the managing authorities and audit authorities on several occasions (for instance, in the Homologues

meeting) on the risks of retrospective projects. Additionally, the checklist used by the Commission for analysing the Closure declaration and Final control report includes a question on retrospective projects where they represent a particular risk for the programme.

68. The Commission reiterates its earlier replies to the Court's 2008 Annual Report[2].

69. The Commission clarifies that the 2007-2013 legal framework did not prohibit the selection of already completed operations ("retrospective operations"), provided that these were completed after the starting date for eligibility[3].

Under the 2014-2020 legal framework operations must not have been physically completed or fully implemented before the application for funding by the beneficiary to the managing authority[4]. Moreover, the CPR introduced a specific obligation[5] towards the managing authority who needs to ensure compliance with applicable law prior to the selection of such operations. The approach in the programming period 2014-2020 is therefore more restrictive than the approach in 2007-2013.

70. Regarding financial instruments, the modification decision on the closure guidelines of the Commission did not affect the provisions of Regulation 1083/2006 according to which the contribution from the funds into financial instruments must have been paid at latest at 31 December 2015. These guidelines therefore provided clarifications under existing rules. See also Commission replies to paragraph 6.45 and recommendation 3 of the Court's 2015 annual report, and Commission reply to paragraph 91 of the ECA Special Report 36/2016.

72. The Commission confirms it is currently in the process of verifying the reliability of the figures used to close the OPs. The relevant problems have been fully addressed in 2014-2020 programming period.

73. The disbursement rates in 2007-2013 programming period followed the lifecycle of the financial instruments.

At closure, the managing authorities have estimated the resources returned attributable to Structural Funds or to be returned in the future from the investments in final recipients totalling 8.4 billion euros of legacy, therefore demonstrating a significant revolving effect.

75. The Commission recognises some risks linked to contractual advance payments, but stresses that the legal base considers those eligible throughout the programming period. However, the Commission considers that the clarification provided as regards the eligibility and the good practices advice offered with respect to the use/eligibility of contractual advance payments in the Question & Answer on Closure and through the Task Force on Better Implementation, achieved sufficient mitigation of the risk. The Commission is not aware of contractual advance payments have led to the selection of poor quality projects.

76. The Commission points out that the Czech authorities decided to allow advances in order to speed up absorption. The Commission recommended not to go beyond standard market practice.

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[2] Reference: The Commission reply to Paragraph 6.19 of the Court's 2008 Annual Report.

[3] Article 56(1) of Regulation (EC) No 1083/2006

[4] Article 65(6 of Regulation (EU) No 1303/2013

[5] Article 125(3)(e) of Regulation (EU) No 1303/2013

77. At this stage of the closure process, the Commission notes that the risk of irregularities did not materialise and no major issues related to advance payments influenced the implementation of the programme.

78. The Commission clarifies that Hungarian programmes have mostly overcommitted resources at the moment of closure and a list of non-operational projects has been requested for each Operational Programme, so there is no risk that contractual advances would not be used for effective projects.

In any case the Commission recommended not to go beyond standard market practice for advances.

CONCLUSIONS AND RECOMMENDATIONS

82. On the basis of the results of the ex-post evaluation of the 2007-2013 programming period and of the 7th report on Economic, Social and Territorial Cohesion, Cohesion policy has shown overall good results. The Commission is committed to maintaining the achievement of good results and to continue its efforts to accelerate absorption in Member States.

83. The Commission underlines that while the timely approval of programmes is important in relation to programme implementation there are other important factors in terms of absorption over the period. Programmes approved relatively late compared to the average can still achieve better than average absorption levels by the end of the period. One of those factors is whether programmes are subject to a n+2 or a n+3 rule than whether the adoption date occurs a couple of months earlier or later. As compared to the n+3 rules, the n+2 rule enforces a stronger budgetary discipline and incentivises faster budgetary implementation.

84. The Commission recognises the disincentive effect on absorption of the n+3 rule and of the high level of pre-financing, in particular in light of the annual accounts systems and the designation process. The Commission has taken this into account when presenting its proposals for post-2020.

The Commission reiterates its replies provided to the Special Report 36/2016[6]. An overlap between two periods is necessary given that many operations take several years to be implemented and that there will always be a start-up phase and wrapping up phase. Furthermore discontinuing the overlap of eligibility periods will result in less policy implementation. The Commission enhances continuity between periods through a number of measures, including phasing of larger projects.

85. The Commission started taking actions for some Member States as early as 2010 immediately when some risk of slow absorption was perceived[7]. For certain Member States additional actions had to be undertaken from 2014 onwards.

87. The Commission reiterates that performance issues are addressed throughout the programming period. It is standard programme management practice that when a programme shows indication of

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[6] Please see the Commission replies to paragraphs 129 and 130 of the ECA's SR36/2016

[7] For example, regular monitoring of the performance of programmes had been undertaken since the beginning of the period. The Commission also used an Expert Evaluation Network to provide an annual overview of implementation and its synthesis and annual reports are available on: http://ec.europa.eu/regional_policy/en/policy/evaluations/ec/2007-2013 The Commission started taking actions for some Member States as early as 2010 immediately when some risk of slow absorption was perceived. The 2013 annual report highlights the challenges and identifies clearly issues leading to slow absorption in specific countries. On this link: http://ec.europa.eu/regional_policy/sources/docgener/evaluation/pdf/eval2007/2013_een_task2_synthesis_final.pdf

The Strategic Reports adopted by the Commission in 2010 and 2013 provided an EU overview of implementation, and passed messages on the need to accelerate implementation and delivery of investment objectives.

a lower absorption rate, the actions taken to address these issues focus on absorption within the existing targets.

First bullet: Reprogramming is a necessary tool to ensure flexibility in relation to interventions defined in the programmes for a period of almost a decade.

Fourth bullet: The Commission is not aware of contractual advance payments that have led to the selection of poor quality projects.

The selection of projects towards the end of the eligibility period follows the same criteria (including performance) as established in a programme.

88. Even if the Commission does not verify the impact of each measure individually it has the overall results of the improved absorption rate of the concerned programmes. The average absorption rate of the three funds (ERDF, ESF, CF) of 97% for 2007-2013 is 2 pp. higher than in 2000-2006 and 2007-2013 represented the first full programming period for 12 Member States.

90. Based on project selection rates and expenditure declared by beneficiaries, the Commission considers implementation being at a comparable level in the respective years of the two programming periods, even if the good level of project selection has currently not yet fully translated into payment claims.

Recommendation 1 – a timetable for legislative framework and programme documents

The Commission accepts this recommendation.

The Commission presented its proposal for the post-2020 legislative framework 29 May 2018, i.e. 30 months prior to the start of the post-2020 programming period. The recommendation has to a large extent already been addressed, in particular in Commission Communication COM(2018)98 of 14 February 2018 'A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020', and in particular section 6 which underlined the importance of a timely agreement on the post 2020 MFF.

Recommendation 2 – well supported requests for revision of programmes (including impacts on results)

The Commission accepts this recommendation.

Recommendation 3 – means to obtain information allowing better monitoring of absorption

The Commission accepts this recommendation.

Recommendation 4 – focus on performance and delivery of good results

The Commission accepts this recommendation.

Event	Date
Adoption of Audit Planning Memorandum (APM) / Start of audit	2.3.2016
Official sending of draft report to Commission (or other auditee)	28.3.2018
Adoption of the final report after the adversarial procedure	30.5.2018
Commission's (or other auditee's) official replies received in all languages	23.7.2018

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Member States absorb funding when they receive a payment from the EU budget as co-financing towards eligible projects. Around a third of the EU budget is set aside for the Cohesion area.
We examined whether the Commission's and Member States' actions were effective in absorbing funding from the ERDF, ESF and CF during the 2007-2013 programme period making comparisons with the 2000-2006 and 2014-2020 programme periods.
We found that implementation started slowly in the 2007-2013 programme period due to inter alia late adoption of the legislative framework, programming documents (OPs and overlap of programme periods. Whereas the Commission monitored the absorption of funds, only around 13 months before the end of the eligibility period did it put in place a Task Force to assist Member States with poorly absorbing OPs. The measures taken led to a marked increase in absorption, however some measures focussed mainly on absorption and compliance with rules with little consideration for results. In particular, frequent revisions of OPs call into question the soundness of the analyses underlying the programming process and the ability to achieve the OP and Cohesion policy objectives.

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