



EUROPEAN COMMISSION

Directorate-General
Regional and Urban Policy

2014-2020 Policy and Legislation Inter-institutional relations

DRAFT

Guidance on *Ex Ante* Conditionalities

PART II

(This document is a provisional text. It is without prejudice to the on-going negotiations in the trilogues between the Council Presidency and the European Parliament)

This guidance is addressed to geographical units for ESI Funds. Its purpose is to provide a framework for the assessment by the Commission of the consistency and adequacy of the information provided by Member States on the applicability and fulfilment of ex-ante conditionalities upon the formal submission of Partnership Agreements and programmes, as well as during the informal dialogue that takes place before the formal submission of programmes and partnership agreements. It will also be made available to Member States.

12 April 2013

DRAFT

Table of Contents

A. THEMATIC <i>EX ANTE</i> CONDITIONALITIES	5
A.1-1 Research and innovation	5
A.1-2 Research and innovation infrastructure.....	15
A. 2-1 Digital growth	19
A. 2-2 Next Generation Access.....	25
A.3 SMEs	33
A. 4-1 Energy efficiency in infrastructure, public buildings, housing sector	41
A. 4-2 Cogeneration	57
A. 4-3 Renewable energy	65
A. 5 Risk prevention and management	73
A. 6-1 Water	85
A. 6-2 Waste	97
A.7-1 Road	115
A.7-2 Railway	131
A.8-1 Access to employment	139
A.8-2 Self-employment.....	147
A. 8-3 Labour market institutions	155
A.8-4 Active and healthy ageing.....	163
A.8-5 Adaptation of workers, enterprises/entrepreneurs to change	169
A. 9-1 Early school leaving.....	177
A.9-2 Higher education	187
A.9-3 Lifelong learning.....	195
A.10-1 Active inclusion	205
A.10-2 Roma inclusion	215
A.10-3 Health.....	225
A.11 Member States administrative efficiency	235
B. GENERAL <i>EX ANTE</i> CONDITIONALITIES.....	247
B.1 Anti-discrimination.....	247
B.2 Gender equality.....	255
B.3 Disability	261
B. 4. Public procurement.....	269
B. 5. State aid	281

B. 6. Environmental legislation.....	289
B.7 Statistical systems and result indicators	295

DRAFT

A. THEMATIC *EX ANTE* CONDITIONALITIES

A.1-1 Research and innovation¹

Thematic objectives	Investment priorities	<i>Ex ante</i> conditionality	Criteria for fulfilment
1. Strengthening research, technological development and innovation (R&D target) (referred to in Article 9(1))	ERDF: - All investment priorities under thematic objective no. 1	1.1. <i>Research and innovation</i> The existence of a national or regional research and innovation strategic policy framework for smart specialisation, where appropriate, in line with the National Reform Programme, to leverage private research and innovation expenditure.	<ul style="list-style-type: none"> - A national or regional research and innovation strategic policy framework for smart specialisation is in place that: <ul style="list-style-type: none"> - is based on a SWOT or similar analysis to concentrate resources on a limited set of research and innovation priorities; - outlines measures to stimulate private RTD investment; - contains a monitoring mechanism. - A framework outlining available budgetary resources for research and innovation has been adopted.

1. When to assess applicability?

The conditionality is applicable, if a MS or region is planning to allocate funding to the investment priorities under the thematic objective n°1 (strengthening research, technological development and innovation).

2. Definitions

A Strategic Policy Framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures or an accumulation of disconnected individual projects. In case measures are contained in different policy documents, they need to be embedded in a politically endorsed strategic approach towards the strategy's objective of economic transformation towards higher knowledge-intensity and added value. A strategy sets out the scope, timeframe, concrete objectives, allocation of resources, a comprehensive set of measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

¹ The table below is based on the Council compromise text.

A research and innovation strategic policy framework for smart specialisation² is an integrated, place-based economic transformation agenda that:

- focuses policy support and investments on key national/regional priorities, challenges and needs for knowledge-based development. These “priorities” are not to be understood as “priority axis” of operational programmes nor necessarily as selecting specific fields of technology or economic sectors. These priorities can be at the cross-section of technologies or sectors (besides these focus areas where investments should be concentrated, horizontal support measures might have been identified and may be funded).
- the choice of these priorities builds on each country/region’s strengths, competitive advantages and potential for excellence and for innovation-driven differentiation, and exploits potential synergies with other countries and regions.
- supports all forms of innovation, i.e. technological as well as practice-based innovation, and aims to stimulate private sector investment.
- gets stakeholders (governmental bodies from different departments and governance levels, business, research, education, civil society, social partners, etc.) fully involved in the shaping of the strategy, selection of priorities, implementation and the monitoring
- encourages innovation and experimentation,
- is evidence-based and includes a sound monitoring and evaluation system.

See the following documents:

- the Guide for regional/national Research and innovation Strategies for Smart Specialisation (RIS3 guide):

<http://s3platform.jrc.ec.europa.eu/s3pguide>

- Fact-sheet on smart specialisation

http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/smart_specialisation_en.pdf

Entrepreneurial discovery process means that the strategy was developed has to go through an active stakeholder involvement process that brought together entrepreneurs and researchers, and as relevant civil society, public sector bodies involved in innovation etc. This helps to avoid the short-comings of purely political interest-driven or consultant-written strategies, because this process allows to draw operational conclusions out of the results of the SWOT / statistical type of analysis to shape ownership around the strategies and to design the intervention methods according to the needs of innovation actors, in particular of course the enterprises. (RI3S guide, step 1)

3. Source of information for assessment

² This definition might be revised in line with the on-going discussions in the trilogues.

- Research and innovation policy monitoring tools:
http://ec.europa.eu/enterprise/policies/innovation/policy/regional-innovation/index_en.htm
- ERAWATCH
http://erawatch.jrc.ec.europa.eu/erawatch/opencms/information/country_pages/
- Innovation Policy Trend Chart
<http://www.proinno-europe.eu/inno-policy-trendchart/page/innovation-policy-trends>
- Regional Innovation Monitor
<http://www.rim-europa.eu/>
- Innovation Union Scoreboard, incl. regional scoreboard, expert reports and analysis carried out for the Commission
<http://www.proinno-europe.eu/inno-metrics/page/innovation-union-scoreboard-2011>

4. Rationale for the *ex ante* conditionality

ESI Funds investments in research and innovation risk not to deliver a sustainable impact on the regional / national economies in terms of higher knowledge-intensity and added value, unless they fit into a well-conceived comprehensive and targeted policy strategy that takes into account all national/regional assets, competitive advantages, and potential of businesses, researchers and universities.

Research and innovation policies – in particular at regional level - are today often inward looking and fragmented. R&I policies remain heavily focused on supply-side measures (investment in R&D capacity) and have not enough demand-side elements. They concentrate on the manufacturing sector, and are not supporting emerging sectors, innovation in services, cross-fertilisation between sectors, public sector innovation and non-R&D innovations. The policy measures are often generic copies of practices elsewhere that are not adjusted to the local/regional needs and potentials³.

³ See for instance Regional Innovation Monitor reports, OECD innovation policy analysis.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p><i>A national or regional⁴ research and innovation strategic policy framework for smart specialisation is in place ...</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the framework and indicates where it or its different elements are published (in a form of a link). 		
<i>... that:</i>		
<p>– <i>is based on a SWOT or similar analysis to concentrate resources on a limited set of research and innovation priorities:</i></p> <ul style="list-style-type: none"> ▪ there is evidence that a SWOT or a similar analysis has been conducted in order to establish priorities for investment ▪ there is a description of the methodology used for the analysis⁵ ▪ there is a description of the prioritisation/elimination process, including the involvement of stakeholders⁶, and of its results. 		
<p>– <i>outlines measures to stimulate private RTD investment:</i></p> <ul style="list-style-type: none"> ▪ there is a description of the policy-mix planned to be used for the implementation of smart specialisation⁷ and indication which programme/instrument will be used for their funding, ▪ there is an explanation on how these measures are tailored to the needs of enterprises, in particular SMEs (e.g. description of the "entrepreneurial discovery process" used for the strategy development), and other private R&I investors and/or which other measures are undertaken to incentivise private research and innovation investments⁸. 		

⁴ Regional research and innovation strategic policy frameworks should be in line with the National Reform Programme.

⁵ See: RI3 guide step 1.

⁶ See: RI3 guide step 4.

⁷ See RI3 guide step 5.

⁸ A mere declaration of political intentions to conform with the "3% target" is insufficient.

<p>– <i>contains a monitoring mechanism:</i></p> <ul style="list-style-type: none"> ▪ there is a description of the methodology, including the chosen indicators, and governance structure of the monitoring mechanism.⁹ ▪ there is a description of how the follow-up to the findings of the monitoring will be ensured. 		
<p><i>A framework outlining available budgetary resources for research and innovation has been adopted.</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the framework and indicates where it is published (in a form of a link) ▪ A framework outlining available budgetary resources for research and innovation has been adopted, indicating various sources of finance [and indicative amounts] (EU, national and other sources as appropriate) 		

⁹ See: RIS guide step 6.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe 2020 Flagship Initiative Innovation Union (COM (2010) 546 final of 6.10.2010), commitments 24/25 and Annex I "Self-assessment tool: Features of well performing national and regional research and innovations systems":

http://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication_en.pdf

- Conclusions of the Competitiveness Council: Conclusions on Innovation Union for Europe (doc. 17165/10 of 26.11.2010):

<http://register.consilium.europa.eu/pdf/en/10/st17/st17165.en10.pdf>

- Communication from the Commission "Regional Policy contributing to smart growth in Europe 2020" COM(2010) 1183:

http://ec.europa.eu/regional_policy/sources/docoffic/official/communic/smart_growth/comm2010_553_en.pdf

2. Extracts of relevant documents

- Communication from the Commission : Europe 2020 Flagship Initiative Innovation Union (COM(2010) 546 final of 6.10.2010)

ANNEX 1 to the Communication: Self-assessment tool: Features of well performing national and regional research and innovation Systems

1. Promoting research and innovation is considered as a key policy instrument to enhance competitiveness and job creation, address major societal challenges and improve quality of life and is communicated as such to the public

– Public action in all relevant policy areas including education and skills, the functioning of product and service markets, financial markets, labour markets, entrepreneurship and the business environment, industrial policy, cohesion/spatial planning, infrastructure/ICT as well as taxation and at all levels, is designed and implemented in a strategic, coherent and integrated framework geared towards fostering innovation and strengthening the knowledge base and fundamental research.

– Where policies and funding are focused on specific priorities, these are increasingly oriented towards addressing major societal challenges, such as resource efficiency, climate change, and health and ageing, and towards deriving competitive advantage from finding new solutions to tackle them.

2. Design and implementation of research and innovation policies is steered at the highest political level and based on a multi-annual strategy. Policies and instruments are targeted at exploiting current or emerging national/regional strengths within an EU context ("smart specialisation")

– An effective and stable centre-of-government structure, typically steered by the top political level, defines broad policy orientations on a multi-annual basis and ensures sustained and properly coordinated implementation. This structure is backed up by networks involving all relevant stakeholders, such as industry, regional and local authorities, parliaments and citizens, thereby stimulating an innovation culture and building mutual trust between science and society.

– A multi-annual strategy defines a limited number of priorities, preceded by an international analysis of strengths and weaknesses at national and regional level and of emerging opportunities ('smart specialisation') and market developments, and provides a predictable policy and budgetary framework.

The strategy duly reflects EU priorities, avoiding unnecessary duplication and fragmentation of efforts, and actively seeks to exploit opportunities for joint programming, cross-border co-operation and exploiting the leverage effects of EU instruments. Bilateral co-operation with non-EU countries is based on a clear strategy and, where possible, is co-ordinated with the other EU Member States.

– An effective monitoring and review system is in place, which makes full use of output indicators, international benchmarking and ex-post evaluation tools.

3. Innovation policy is pursued in a broad sense going beyond technological research and its applications

– A broad concept of innovation - including innovation in services, improvements of processes and organisational change, business models, marketing, branding and design - is actively promoted, *inter alia* through more interdisciplinary work involving groups of users or consumers as important constituencies of open innovation.

– Supply and demand-side policies are developed in a consistent manner, building on and increasing the absorptive capacity of the Single Market.

4. There is adequate and predictable public investment in research and innovation focused in particular on stimulating private investment

– It is recognised that public funding assumes an important role in providing a high quality knowledge infrastructure and as an incentive for maintaining excellence in education and research including access to world-class research infrastructures, building regional S&T capacity and supporting innovation activity especially during periods of economic recessions. As a consequence, public investments in education, research and innovation are prioritised and budgeted in the framework of multi-annual plans to ensure predictability and long term impact, and drawing on the Structural Funds where appropriate.

– Public funding aims at leveraging greater private sector investments.

Innovative financing solutions (e.g. public-private partnerships) and the use of tax incentives are explored and adopted. Reforms are implemented to reflect changing conditions and ensure optimal returns on investments.

5. Excellence is a key criterion for research and education policy

– Research funding is increasingly allocated on a competitive basis and the balance between institutional and project-based funding of research has a clear rationale. Institutes are evaluated on the basis of internationally recognized criteria and projects are selected on the basis of the quality of proposals and expected results, subject to external peer review. Funding to researchers is portable across borders and institutes. Results of publicly funded research are protected and published in a way that encourages their exploitation.

– Higher education and research institutes enjoy the necessary autonomy to organise their activities in the areas of education, research, and innovation, apply open recruitment methods and to draw on alternative sources of funding such as philanthropy.

– The legal, financial and social frameworks for research careers, including doctoral studies, offer sufficiently attractive conditions to both men and women in comparison to international standards, especially those in the US. This includes favourable conditions for reconciling private and professional life and for professional development and training. There are incentives in place to attract leading international talent.

6. Education and training systems provide the right mix of skills

– Policies and incentives are in place to ensure a sufficient supply of (post)graduates in science, technology, engineering and mathematics and an appropriate mix of skills among the population (including through strong vocational and education and training systems) in the medium-to-longer term.

– Education and training curricula focus on equipping people with the capacity to learn and to develop transversal competences such as critical thinking, problem solving, creativity, teamwork, and intercultural and communication skills.

Special attention is paid to address innovation skills gaps. Entrepreneurship education and training is widely available or included in curricula. Partnerships between formal education and other sectors are actively promoted to that end.

7. Partnerships between higher education institutes, research centres and businesses, at regional, national and international level, are actively promoted

– Where possible, research efforts are accompanied by instruments to support the commercialisation of innovative ideas. Policies and instruments such as innovation/knowledge clusters, knowledge transfer platforms, and voucher systems, are in place to encourage co-operation and knowledge sharing and at creating a more favourable business environment for SMEs.

– Researchers and innovators are able to move easily between public and private institutes. There are clear rules on the ownership of intellectual property rights and sharing and support systems are in place to facilitate knowledge transfer and the creation of university spin-offs and to attract (venture) capital and business angels.

– There are no obstacles to setting up and operating transnational partnerships and collaborations.

8. Framework conditions promote business investment in R&D, entrepreneurship and innovation

– Policies to promote innovation, entrepreneurship and enhance the quality of the business environment are closely interconnected.

– Favourable conditions are in place to foster a growing and robust venture capital market, especially for early stage investments.

– Consistent with the Small Business Act for Europe (COM (2008)374), the rules for starting up and running a business are simple and designed from an SME perspective. The legal framework is transparent and up-to-date. Rules are properly enforced. Markets are dynamic and competitive. Willingness to take risks is promoted. Insolvency regulations support the financial re-organisation of enterprises. There is no discrimination against entrepreneurs who may have failed the first time around.

– An efficient, affordable and effective system for the protection of intellectual property is in place, which fosters innovation and preserves investment incentives. The market for innovative products and services is kept constantly up to date by means of an efficient standard-setting system.

9. Public support to research and innovation in businesses is simple, easy to access, and high quality

– There is a limited number of well targeted, clearly differentiated, and easy to access support schemes consistent with support available at EU level and that address well identified market failures in the provision of private funding for innovation.

– Funding support is tailored to the needs of companies, particularly SMEs. The emphasis is placed on outputs rather than on inputs and controls. Bureaucracy is kept to a minimum, selection criteria are straightforward and time to contract and to payment are as short as possible. Funding schemes are regularly evaluated and benchmarked against comparable schemes in other countries.

– National funding is allocated through international evaluation procedures and encourages trans-national cooperation. Rules, procedures and time-tables are aligned in order to facilitate participation in EU programmes and co-operation with other Member States.

– Specific support is often available to young innovative companies to help them commercialise ideas rapidly and promote internationalisation.

10. The public sector itself is a driver of innovation

– The public sector provides incentives to stimulate innovation within its organisations and in the delivery of public services.

– Active use is made of public procurement of innovative solutions in order to improve public services, including through dedicated budgets. Tenders are based on output-based performance specifications and contracts are awarded on the basis of qualitative criteria which favour innovative solutions such as life-cycle analysis, rather than lowest price only. Opportunities for joint procurement are exploited.

– Where possible, government-owned data is made freely available as a resource for innovation.

- Council conclusions, as adopted by the Council ("Competitiveness") at its meeting on 25-26 November 2010 (fragments).

Europe 2020 Flagship Initiative: "Innovation Union": Accelerating the transformation of Europe through innovation in a fast changing world

I. KEY MESSAGES

By putting research and innovation at the centre of the Europe 2020 strategy for jobs and growth, the European Council has recognised the need for urgent action in the field of innovation. To make the Innovation Union a reality, the Council identifies the following priorities for action:

1. Taking a strategic and integrated approach to innovation in Europe

To succeed in turning Europe into an Innovation Union and securing long-term competitiveness and growth, the EU and its Member States should adopt a strategic and integrated approach to innovation whereby all relevant supply and demand policies and instruments are designed to contribute to innovation, in the short, medium and long term. Such an approach should optimise synergies between and within different EU and national/regional policies and ensure greater involvement of all stakeholders in the innovation process and support the full use of Europe's intellectual capital. Europe should promote a broad concept of innovation, aiming at competitiveness while also addressing societal challenges.

2. Creating the right conditions for a globally competitive innovation environment in Europe

In the context of fierce global competition, Europe should unlock and foster its potential for innovation and creativity by creating an environment that is conducive to innovation and in which ideas can be turned into commercial successes more easily, enabling SMEs to innovate and to grow, and creating more high-technology companies. It is therefore urgent to create the right framework conditions by strengthening the entire knowledge triangle" to stimulate investment in Research, Development and Innovation (RDI) in Europe and to facilitate commercialisation and knowledge transfer by:

- taking action to ease access to finance for RDI purposes by companies, especially SMEs, notably by making better use of funds and financial instruments, including those of the EIB, to lever private funding, by creating an effective single market for venture capital funds, and by conducting a review of relevant State aid frameworks in line with the Innovation Union objectives;
- simplifying and streamlining urgently European programmes and procedures in RDI;
- taking adequate measures to achieve a well-functioning, unified European Research Area in which researchers, scientific knowledge and technology can circulate freely;
- systematically applying the "think small first" principle;
- setting up a fully functioning Digital Single Market for the benefit of European businesses, in particular SMEs and innovative start-ups, and European consumers;
- making a strategic use of public (including pre-commercial) procurement for innovative products and services;
- taking urgent steps to accelerate and modernise the EU's standardisation procedures to establish interoperability and foster innovation in fast-moving global markets;

3. Maximising the impact and efficiency of resources

At times of significant public budget constraints, it is crucial for the EU to safeguard its sources of future growth and jobs, notably by:

- prioritising investment in education, training, research (from fundamental to applied), development and innovation, and key technologies, including key enabling technologies;
- putting in place strong policies for human resources in science, technology and innovation;
- maximising value for money by tackling fragmentation and by increasing the efficiency of public spending on RDI at EU, national and regional level;
- encouraging to mobilise available Structural Funds for RDI, which should remain an important priority for the next programming period, without prejudging the future Multiannual Financial Framework;
- facilitating the co-operation between European networks and clusters;
- considering scientific and research cooperation with third countries as a matter of common concern.

The Council therefore welcomes the objectives of the proposed European Innovation Partnerships (EIPs) and supports the development of a proposal with a view to launching a pilot Partnership on active and healthy

ageing. The Council will take the necessary political decisions on EIPs before they are launched. It notes the Commission's intention to seek the Council's endorsement in making a success of the implementation of the pilot.

4. Improving governance and monitoring progress

Improved governance at all levels and horizontal co-ordination, as well as steering and regular monitoring at the highest political level are required to ensure the success of Innovation Union, in particular of European Innovation Partnerships.

(.....)

III. ROADMAP FOR ACTIONS

THE COUNCIL OF THE EUROPEAN UNION

(.....)

2. INVITES Member States:

- a) to improve, where necessary, the performance of national systems, making full use, if appropriate, of the self-assessment tool, and to develop strategies to meet their national R&D targets;
- b) to improve the use of existing Structural Funds for research and innovation projects;
- c) to increase and improve the use of innovative public (pre-commercial) procurement and to use procurement budgets for pre-commercial procurement and public procurement of innovative products and services on a voluntary basis (by 2011).

3. Further reading

- State aid framework for R&D and innovation

http://ec.europa.eu/competition/state_aid/legislation/horizontal.html

- Thematic guides related to smart specialisation implementation (service innovation, creative industries, connecting universities to regional growth, innovation-based incubators, Connecting Smart and Sustainable Growth through Smart Specialisation)

<http://s3platform.jrc.ec.europa.eu/guides>

- Exchange of good policy practices promoting the industrial uptake and deployment of Key Enabling Technologies (inception report, March 2012): country profiles and policies in terms of support to KETS and their up-take

http://ec.europa.eu/enterprise/sectors/ict/files/kets/ex_of_practice_ket_final_report_en.pdf

A.1-2 Research and innovation infrastructure¹⁰

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
1. Strengthening research, technological development and innovation (R&D target) (referred to in Article 9(1))	ERDF: - Enhancing research and innovation infrastructure (R&I) and capacities to develop R&I excellence and promoting centres of competence, in particular those of European interest	1.2 The existence of a multi-annual plan for budgeting and prioritization of investments.	– An indicative multi-annual plan for budgeting and prioritization of investments linked to EU priorities, and, where appropriate, the European Strategy Forum on Research Infrastructures - ESFRI has been adopted.

1. When to assess applicability?

The conditionality is applicable, if a MS or region is planning to allocate funding to enhance research and innovation infrastructure (R&I) and capacities to develop R&I excellence and promote centres of competence, in particular those of European interest (Art. 5.1 (a) of the ERDF Regulation).

2. Definitions

Research infrastructure means facilities, resources and related services that are used by the scientific community to conduct research in their respective fields and covers scientific equipment or sets of instruments; knowledge-based resources such as collections, archives or structures for scientific information; enabling Information and Communications Technology-based infrastructures such as Grid, computing, software and communication, or any other entity of a unique nature essential to achieve excellence in research¹¹. Such infrastructures may be ‘single-sited’ or ‘distributed’ (an organised network of resources).

Innovation infrastructures are facilities, such as technology, science or business parks and centres of competence.

The European Strategy Forum on Research Infrastructures (ESFRI) is a strategic instrument to develop the scientific integration of Europe and to strengthen its international outreach. The competitive and open access to high quality Research Infrastructures supports and benchmarks the quality of the activities of European scientists, and attracts the best researchers from around the world.

The mission of ESFRI is to support a coherent and strategy-led approach to policy-making on research infrastructures in Europe, and to facilitate multilateral initiatives leading to the better use and development of research infrastructures, at EU and international level.

¹⁰ The table below is based on the Council compromise text.

¹¹ In line with Article 2(a) of Council Regulation (EC) N° 723/2009 of 25.6.2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009, p. 1.

3. Source of information for assessment

ESFRI Website

http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=esfri

- ESFRI Roadmap:

http://ec.europa.eu/research/infrastructures/index_en.cfm?pg=esfri-other-roadmaps

4. Rationale for the *ex ante* conditionality

Research and innovation infrastructures are a driving force behind innovation. Some parts of Europe lack the necessary research and innovation infrastructure to fully participate in European Research Area¹² and projects under the EU framework programmes (Horizon2020) or do not correspond to the needs of innovative firms.

On the other hand, there is also scope for synergies and cooperation at EU level that should be exploited.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p><i>An indicative multi-annual plan for budgeting and prioritization of investments linked to EU priorities, and, where appropriate, the European Strategy Forum on Research Infrastructures - ESFRI has been adopted.</i></p> <ul style="list-style-type: none">▪ The strategic policy framework for smart specialisation contains an indicative multi-annual plan for budgeting and prioritization of investments linked to EU priorities:<ul style="list-style-type: none">○ The prioritisation responds to the needs identified in the smart specialisation strategic policy framework;○ The prioritization of investments took into account existing R&I infrastructures and capacities in by Europe and as appropriate, the priorities identified by the European Strategy Forum on Research Infrastructures (ESFRI).○ The framework outlines available and foreseen budgetary resources for investments in R& I infrastructures and centres of competences and indicates various sources of finance [and indicative amounts].		

¹² http://ec.europa.eu/research/era/index_en.htm

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Conclusions of the Competitiveness Council on 'A reinforced European research area partnership for excellence and growth' (11 December 2012)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/134168.pdf

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Europe 2020 Flagship Initiative Innovation Union (COM (2010) 546 final of 6.10.2010), commitments 24/25 and Annex I "Self-assessment tool: Features of well performing national and regional research and innovations systems":

http://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication_en.pdf

- Conclusions of the Competitiveness Council: Conclusions on Innovation Union for Europe (doc. 17165/10 of 26.11.2010):

<http://register.consilium.europa.eu/pdf/en/10/st17/st17165.en10.pdf>

- Communication from the Commission "Regional Policy contributing to smart growth in Europe 2020" COM(2010) 1183:

http://ec.europa.eu/regional_policy/sources/docoffic/official/communic/smart_growth/comm2010_553_en.pdf

2. Extracts of relevant documents

- Conclusions of the Competitiveness Council on 'A reinforced European research area partnership for excellence and growth' (11 December 2012)

In these Conclusions, the Council endorses the need for strengthened partnership in the field of research infrastructures and:

"Emphasises the need for renewing and adapting the mandate of ESFRI to adequately address the existing challenges and also to ensure the follow-up of implementation of already on-going ESFRI projects after a comprehensive assessment, as well as the prioritisation of the infrastructure projects listed in the ESFRI roadmap."

3. Further reading

DRAFT

A. 2-1 Digital growth¹³

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
Enhancing access to and use and quality of information and communication technologies (<i>Broadband target</i>) (referred to in Article 9(2))	ERDF: <ul style="list-style-type: none"> - developing ICT products and services, e-commerce and enhancing demand for ICT - strengthening ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health 	2.1 <i>Digital growth</i> : A strategic policy framework for digital growth to stimulate demand for affordable, good quality and interoperable ICT-enabled private and public services and increase uptake by citizens, including vulnerable groups, businesses and public administrations including cross border initiatives.	A strategic policy framework for digital growth, for instance, within the national or regional innovation strategic policy framework for smart specialisation is in place that contains: <ul style="list-style-type: none"> - budgeting and prioritisation of actions through a SWOT or similar analysis consistent with the Scoreboard of the Digital Agenda for Europe; - an analysis of balancing support for demand and supply of information and communication technologies (ICT) should have been conducted; - indicators to measure progress of interventions in areas such as digital literacy, e-inclusion, e-accessibility, and of e-health within the limits of Article 168 TFEU which are aligned with existing relevant sectoral national or regional strategies; - assessment of needs to reinforce ICT capacity-building.

1. When to assess applicability?

The conditionality is applicable, if a Member State is planning to allocate funding to the investment priorities 2(a) and 2(b) of the ERDF Regulation under the thematic objective n°2 (developing ICT products and services, e-commerce and enhancing demand for ICT and strengthening ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health).

2. Definitions

A Strategic Policy Framework for Digital Growth charts the obstacles and actions needed to overcome them in order to maximise the social and economic potential of ICT, most notably the internet. The strategy is based on evidence and sets objectives that make possible to chart them against the Digital Agenda for Europe. It contains measures ensuring that attractive content and services are made available in an interoperable internet environment to stimulate demand for higher speeds and capacity as well as measures supporting the deployment and take-up of faster networks that can deliver this content and services.

¹³ The table below is based on the Council compromise text.

These objectives are agreed and implemented in cooperation with all relevant stakeholders. It can be established in a single policy document (e.g. national or regional "digital agenda", for instance, within the national or regional innovation strategic policy framework for smart specialisation) or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

3. Source of information for assessment

- Digital Agenda Scoreboard 2012

https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/scoreboard_life_online.pdf

- by country:

<https://ec.europa.eu/digital-agenda/en/scoreboard-country>

- List of Digital Agenda Scoreboard Indicators:

<http://scoreboard.lod2.eu/index.php?page=indicators>

4. Rationale for the *ex ante* conditionality

The European Commission has adopted the Digital Agenda for Europe as part of the overall Europe 2020 strategy for smart, sustainable and inclusive growth. The Digital Agenda proposes 101 specific policy actions across 7 domains: digital single market; interoperability and standards; trust and security; fast and ultra-fast internet access; research and innovation; digital literacy, skills and inclusion; and ICT-enabled benefits for EU society. This combined set of actions is designed to stimulate a virtuous circle of investment in and usage of digital technologies.

The Digital Agenda for Europe requires a sustained level of commitment at both EU and Member State levels (including at regional level). The *ex ante* conditionality aims therefore to foster the development and implementation of national and regional digital growth measures, to assess their consistency with the Digital Agenda for Europe's goals and exploit national/regional assets in the spirit of smart specialisation.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A strategic policy framework for digital growth, for instance, within the national or regional innovation strategic policy framework for smart specialisation is in place...</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the framework and indicates where it is or its different elements are published (in form of a link). 		
<p><i>...that contains:</i></p>		
<p>– <i>budgeting and prioritisation of actions through a SWOT or similar analysis consistent with the Scoreboard of the Digital Agenda for Europe:</i></p> <ul style="list-style-type: none"> ▪ There is evidence that a SWOT or a similar analysis has been conducted in order to establish priorities for investment. <ul style="list-style-type: none"> ○ There is a description of the methodology and data sources used for the analysis. ○ There is a description of the prioritisation / elimination process that was used to identify investment priorities, including the involvement of stakeholders. ▪ The framework outlines available budgetary resources for ICT interventions and indicates various sources of finance [and indicative amounts] (EU, national and other sources as appropriate). 		
<p>– <i>an analysis of balancing support for demand and supply of information and communication technologies (ICT) should have been conducted:</i></p> <ul style="list-style-type: none"> ▪ There is evidence that an analysis of balancing support for demand and supply of information and communication technologies has been conducted. <ul style="list-style-type: none"> ○ There is a description of the methodology used for identifying demand and supply of ICT and for balancing the support for them. ○ The analysis covers all the relevant socio-economic issues related to demand for ICT (such as age structure, education, income, level of ICT training/skills, employment status, affordability of service, productivity, Internet penetration and the use of and demand for ICT services and applications in households, businesses and public administrations, increase eskills, etc.) and supply measures (availability of equipment and infrastructures, services and applications, and of ICT professionals/practicioners). ○ Where appropriate, the analysis also covers ICT as a sector (e.g. a concentration of manufacturing of 		

<p>ICT hardware and equipment, IT service and application providers, R&D in ICT, living labs, etc.).</p> <ul style="list-style-type: none"> ○ There is a summary of the results of this analysis. 		
<p>– <i>indicators to measure progress of interventions in areas such as digital literacy, e-inclusion, e-accessibility, and of e-health within the limits of Article 168 TFEU which are aligned with existing relevant sectoral national or regional strategies:</i></p> <ul style="list-style-type: none"> ▪ A monitoring mechanism has been set up to measure the progress of ICT use and its impact (e.g. productivity gains) at national or regional level: <ul style="list-style-type: none"> ○ There is evidence that the monitoring mechanism covers all the areas of ICT interventions arising from existing relevant sectoral EU, national or regional strategies. When the strategic policy framework for digital growth is part of a national or regional innovation strategic policy framework for smart specialisation, its monitoring will be carried out as part of the monitoring of this framework. ○ The monitoring mechanism uses the same indicators as those used by the Digital Agenda Scoreboard but can contain additional indicators to track the progress of the implementation measures. 		
<p>– <i>assessment of needs to reinforce ICT capacity-building:</i></p> <ul style="list-style-type: none"> ○ The strategic policy framework for digital growth contains an analysis of the weaknesses to identify and deliver ICT interventions. ○ It identifies, where appropriate, an adequate description of measures to be taken or already in place to ensure the capacity of intermediate bodies and beneficiaries to identify and deliver those interventions. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Agenda for Europe (COM(2010) 245 final/2 of 26.8.2010)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>

- Council Conclusions on the Digital Agenda for Europe (doc. 10130/10 of 31 May 2010)

The Council of the European Union endorsed the establishment of an ambitious action agenda and invited the Commission and Member States to seek ways to enhance horizontal coordination between concerned institutions both at the EU and national level in order to improve the implementation of the Digital Agenda for Europe.

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/trans/114710.pdf

- Communication from the Commission (COM(2012) 784 final) of 18 December 2012 on "The Digital Agenda for Europe - Driving European growth digitally"

This Communication refocuses the Digital Agenda to better stimulate the digital economy through measures in several key areas.

http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1381

2. Extract of relevant documents

3. Further reading

- Digital Agenda Europe

<http://ec.europa.eu/digital-agenda/digital-agenda-europe>

DRAFT

A. 2-2 Next Generation Access¹⁴

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
2. Enhancing access to and use and quality of information and communication technologies (Broadband target) (referred to in Article 9(2))	ERDF: – extending broadband deployment and the roll-out of high-speed networks and supporting the adoption of future and emerging technologies and networks for the digital economy	2.2 <i>Next Generation Access (NGA) Infrastructure</i> : The existence of national or regional NGA Plans which take account of regional actions in order to reach the EU high-speed Internet access targets, focusing on areas where the market fails to provide an open infrastructure at an affordable cost and to a quality in line with the EU competition and state aid rules, and provide accessible services to vulnerable groups.	A national and/or regional NGA Plan is in place that contains: – a plan of infrastructure investments based on an economic analysis taking account of existing infrastructure and published private investment plans; – sustainable investment models that enhance competition and provide access to open, affordable, quality and future proof infrastructure and services; – measures to stimulate private investment.

1. When to assess applicability?

The conditionality is applicable, if a Member State is planning to allocate ERDF funding to extend broadband deployment and the roll-out of high-speed networks and support the adoption of future and emerging technologies and networks for the digital economy (Article 5 (2) (a) of the ERDF Regulation).

2. Definitions

- Next generation networks (NGNs) are networks which are capable of delivering broadband access services with enhanced characteristics (such as higher throughput) as compared to those provided over basic broadband networks.

Next Generation Networks consist at least in part of optical elements (fiber) but other technologies can be used notably in the part of the network closer to the user (Next Generation Access –NGA- network).

NGNs are able to meet at least the 30 Mbps target.

3. Source of information for assessment

- Digital Agenda Scoreboard

¹⁴ The table below is based on the Council compromise text.

The Scoreboard assesses progress with respect to the targets set out in the Digital Agenda. In addition, it provides analysis and detailed data on all the policy areas covered by the Digital Agenda.

- *General:*

<https://ec.europa.eu/digital-agenda/en/scoreboard>

- *on Fast and Ultra-fast Internet Access:*

<https://ec.europa.eu/digital-agenda/en/pillar-4-fast-and-ultra-fast-internet-access>

- *by country:*

<https://ec.europa.eu/digital-agenda/en/scoreboard-country>

- Study commissioned by the European Commission on "Broadband coverage in Europe in 2011. Mapping progress towards the coverage objectives of the Digital Agenda"

This study monitors the progress on the broadband coverage objectives of the Digital Agenda (basic broadband access for all by 2013 and high speed broadband access with at least 30 Mbps download speed for all by 2020).

http://ec.europa.eu/information_society/newsroom/cf//document.cfm?doc_id=1102

- Guide to Broadband investments (September 2011)

This document sets out best practice examples in planning an investment of public funds in broadband projects. It provides especially guidance on different investment models (p 37-44).

http://ec.europa.eu/regional_policy/sources/docgener/presenta/broadband2011/broadband2011_en.pdf

4. Rationale for the *ex ante* conditionality

Broadband connectivity is of strategic importance for European growth and innovation in all sectors of the economy and for social and for territorial cohesion.

The Digital Agenda for Europe (DAE) restates the objective to bring basic broadband to all Europeans by 2013 and sets targets for the deployment and take up of fast and very fast broadband by 2020, namely to ensure that:

- all Europeans have access to much higher internet speeds of above 30 Mbps;
- 50% or more of European households subscribe to internet connections above 100 Mbps.

The DAE foresees a number of measures to foster the deployment of the networks required to meet these two objectives and to support the substantial investments required in the coming years.

To achieve the objective of access to Internet speeds of above 30 Mbps it is estimated that up to EUR 60 billion of investment would be necessary and up to EUR 270 billion for at least 50 % of households to take up Internet connections above 100 Mbps. Such investments shall primarily come from commercial investors.

However, the deployment of broadband networks is generally more profitable where potential demand is higher and concentrated, i.e. in densely populated areas. Because of high fixed costs of investment, unit costs increase significantly as population densities drop. Therefore, when deployed on commercial terms, broadband networks tend to profitably cover only part of the population. In addition, even in more populated areas economic reasons may result in insufficient coverage.

For these reasons, the Digital Agenda for Europe (DAE) objectives cannot be reached without the support of public funds. This been said, it is essential that public funds are carefully used in this sector and that the Commission ensures that public support is complementary and does not substitute investments of market players.

NGN plans are an *ex-ante* conditionality as they identify the areas where public intervention is required because market actors have not rolled-out these infrastructures (and it is unlikely that they will do it in the near future) as well as the most efficient way of intervention.

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements for non-fulfilment
<p><i>A national and/or regional NGA Plan is in place ...</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the plan and indicates where it is published (in form of a link). 		
<p><i>... that contains:</i></p>		
<p>– <i>A plan of infrastructure investments based on an economic analysis taking account of existing infrastructure and published private investment plans:</i></p> <ul style="list-style-type: none"> ▪ There is evidence that an economic analysis has been conducted including : <ul style="list-style-type: none"> ○ a description of the methodology and data sources used for the analysis; ○ a map of existing and planned private and public infrastructures, as well as data on coverage and take-up. ▪ The plan outlines available budgetary resources for broadband interventions (EU, national, regional and other sources as appropriate). ▪ The plan is operational : <ul style="list-style-type: none"> ○ It contains coverage and take-up targets and indicators allowing a comparison with the related indicators of the Digital Agenda for Europe; ○ It contains a list of planned investments during the programming period (including estimated cost), aimed at reaching the high-speed targets foreseen for 2020 in the Digital Agenda for Europe. 		
<p>– <i>sustainable investment models that enhance competition and provide access to open, affordable, quality and future proof infrastructure and services:</i></p> <ul style="list-style-type: none"> ▪ The plan includes a presentation of the envisaged investment models at national or other level: <ul style="list-style-type: none"> ○ There is a description of the prioritisation / elimination process that was used to identify investment priorities (e.g. considering the geographical features of the territory; population density; elements affecting demand such as levels of income, education, ICT training, employment status, ageing structure, etc.); 		

<p>The envisaged "investment models" are in line with the categories listed in the Guide to Broadband investments;</p> <ul style="list-style-type: none"> ○ There is a description of how the envisaged models optimise the use of public resources (e.g. use of financial instruments and/or grants). 		
<p>– <i>measures to stimulate private investment:</i></p> <ul style="list-style-type: none"> ▪ The plan describes all relevant measures (already in place or foreseen) for the stimulation of private investment (e.g. coordination of planning; rules for sharing physical infrastructure and in-house equipment; cost reductions measures)¹⁵. ▪ The plan includes the planned schedule for the implementation of these measures. ▪ The plan contains the schedule for the authorisation of EU harmonised bands for Wireless Broadband in line with the Radio Spectrum Policy Programme. 		

¹⁵ See Section 4 of the Commission Staff Working Document (SWD(2012) 68 final/2) on the implementation of national Broadband Plans of 23 March 2012

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive") – consolidated version including amendments introduced by amending Acts in 2007 and 2009

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0021:20091219:EN:PDF>

- Directive 2002/19/EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("Access Directive") - consolidated version including the amendments introduced by Directive 2009/140/EC of 25 November 2009

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0019:20091219:EN:PDF>

- Communication from the Commission of 19 May 2010 on A Digital Agenda for Europe

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:HTML>

- Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA)

<http://eur-lex.europa.eu/LexUriServ/%20LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF>

- Communication from the Commission (COM(2010) 472 final) of 20 September 2010 on European Broadband: investing in digitally driven growth

In this Communication the Commission stressed the importance of all Member States having an operational broadband plan with defined national targets aligned on European broadband targets, as well as a balanced set of policy measures to incentivise investment. The Communication included a commitment to review national broadband plans as part of its Digital Agenda governance.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0472:FIN:EN:PDF>

- Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme

The Radio Spectrum Policy Programme (RSPP) defines key policy objectives and sets up general principles for managing the radio spectrum in the internal market. The plan also contains a schedule for the authorisation of EU harmonised bands for Wireless Broadband to be completed by 1 January 2013.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0007:0017:EN:PDF>

- Commission Staff Working Document (SWD(2012) 68 final/2) on the implementation of national Broadband Plans of 23 March 2012

In line with the commitment taken in the 2012 Broadband Communication, this paper examines the current state of play with respect to the implementation of national broadband plans.

http://ec.europa.eu/information_society/newsroom/cf/document.cfm?action=display&doc_id=914

- Communication from the Commission (COM(2012) 784 final) of 18 December 2012 on "The Digital Agenda for Europe - Driving European growth digitally"

This Communication refocuses the Digital Agenda to better stimulate the digital economy through measures in several key areas, including high-speed fixed and mobile broadband networks.

http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1381

2. Extract of relevant documents

- Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme

Article 6

Spectrum needs for wireless broadband communications

1. Member States shall, in cooperation with the Commission, take all steps necessary to ensure that sufficient spectrum for coverage and capacity purposes is available within the Union, in order to enable the Union to have the fastest broadband speeds in the world, thereby making it possible for wireless applications and European leadership in new services to contribute effectively to economic growth, and to achieving the target for all citizens to have access to broadband speeds of not less than 30 Mbps by 2020.

2. In order to promote wider availability of wireless broadband services for the benefit of citizens and consumers in the Union, Member States shall make the bands covered by Decisions 2008/411/EC (3,4-3,8 GHz), 2008/477/EC (2,5- 2,69 GHz), and 2009/766/EC (900-1 800 MHz) available under terms and conditions described in those decisions. Subject to market demand, Member States shall carry out the authorisation process by 31 December 2012 without prejudice to the existing deployment of services, and under conditions that allow consumers easy access to wireless broadband services.

3. Member States shall foster the ongoing upgrade, by providers of electronic communications, of their networks to the latest, most efficient technology, in order to create their own spectrum dividends in line with the principles of service and technology neutrality.

4. By 1 January 2013, Member States shall carry out the authorisation process in order to allow the use of the 800 MHz band for electronic communications services. The Commission shall grant specific derogations until 31 December 2015 for Member States in which exceptional national or local circumstances or cross-border frequency coordination problems would prevent the availability of the band, acting upon a duly substantiated application from the Member State concerned. EN L 81/14 Official Journal of the European Union 21.3.2012.

If a Member State's substantiated cross-border frequency coordination problems with one or more countries, including candidate or acceding countries, persist after 31 December 2015 and prevent the availability of the 800 MHz band, the Commission shall grant exceptional derogations on an annual basis until such problems are overcome.

Member States to which a derogation has been granted under the first or second subparagraph shall ensure that the use of the 800 MHz band does not prevent the availability of that band for electronic communications services other than broadcasting in neighbouring Member States.

This paragraph shall also apply to the spectrum coordination problems in the Republic of Cyprus arising from the fact that the Government of Cyprus is prevented from exercising effective control in part of its territory. [...]

3. Further reading

- Broadband technologies for the future:
http://ec.europa.eu/information_society/activities/broadband/docs/annex_1.pdf
- Communication from the Commission (C(2012) 9609/2) of 3 September 2012 on "EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks"
http://ec.europa.eu/competition/state_aid/legislation/broadband_guidelines_en.pdf
 - EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>
- Guide to Broadband Investment, September 2011
http://ec.europa.eu/regional_policy/sources/docgener/presenta/broadband2011/broadband2011_en.pdf

A.3 SMEs¹⁶

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
3. Enhancing the competitiveness of small and medium-sized enterprises (SMEs) (referred to in Article 9(3))	ERDF: – promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms, including through business incubators	3.1. Specific actions have been carried out for the effective implementation of the Small Business Act (SBA) and its Review of 23 February 2011 ¹⁷ including the "Think Small First" principle. 3.2. Transposition into national law of Directive (2011/7/EU) of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions ¹⁸ .	The specific actions include: – a monitoring mechanism to ensure the implementation of the SBA including a body in charge of coordinating SME issues across different administrative levels ("SME Envoy"); – measures to reduce the time to set-up business to 3 working days and the cost to €100; – measures to reduce the time needed to get licenses and permits to take up and perform the specific activity of an enterprise to 3 months; – a mechanism for systematic assessment of the impact of legislation on SMEs using an "SME test" while taking into account differences in the size of enterprises, where relevant. Transposition of that Directive in accordance with Article 12 of the Directive (by 16 March 2013).

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding to the investment priority 3(a) of the ERDF Regulation (Art.5) under the thematic objective no. 3 (promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms, including through business incubators).

¹⁶ The table below is based on the Commission's proposal for the CPR Regulation.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Think Small First - A Small Business Act for Europe (COM(2008) 394 of 23.6.2008); Conclusions of the Competitiveness Council: Think Small First – A Small Business Act for Europe (doc. 16788/08, 1.12.2008); Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Review of the "Small Business Act" for Europe (COM(2008) 78 final, 23.2.2011); Conclusions of the Competitiveness Council: Conclusions on the Review of the "Small Business Act" for Europe (doc. 10975/11 of 30.5.2011).

¹⁸ OJ L 48, 23.2.2011, p. 1.

2. Definitions

Member States' SME Envoys: Each SME Envoy¹⁹ is appointed by the national government and, in most cases, representing the Ministry or Agency with the remit of SME policy. They promote SMEs' interests and in particular:

- promote SMEs' interests throughout all government bodies, including those at regional and local levels, and ensure that the "Think Small First" principle is integrated into their policy-making and regulatory proposals.
- act as the main interface between the European Commission and national policy-makers for contributing towards the dialogue on SBA implementation.
- contribute towards evaluating and reporting on the uptake of the SBA in the Members States, stepping up efforts to disseminate widely information on SME-policy actions and promoting the exchange of good practices.

SME test: The idea behind an SME test²⁰ is to analyze the effects of a legislative proposal on SMEs. The SME test comprises three main steps:

1. Preliminary assessment of businesses likely to be affected
2. Measurement of the impact on SMEs (cost/benefit analysis)
3. Use of mitigating measures, if appropriate.

Late payment: payment not made within the contractual or statutory period of payment²¹.

Commercial transactions: transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration.

Amount due: the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment.

3. Source of information for assessment

- SBA fact-sheets:

http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm#h2-2

- Late payment Directive:

http://ec.europa.eu/enterprise/policies/single-market-goods/fighting-late-payments/index_en.htm

¹⁹ http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-envoy/national-sme-envoys/index_en.htm

²⁰ http://ec.europa.eu/enterprise/policies/sme/small-business-act/sme-test/index_en.htm#h2-3

²¹ http://ec.europa.eu/enterprise/policies/single-market-goods/fighting-late-payments/index_en.htm

4. Rationale for the *ex ante* conditionality

SMEs competitiveness and growth and the set-up of new companies is often hampered by a poor business environment that does not take into account the specific needs, as well as staff and financial limitations of SMEs and/or lack of enforceability of contracts. Without improvements in these fields, the ESI Funds investments in SME competitiveness would risk not to deliver optimal impact on jobs and growth.

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p><i>The specific actions include:</i></p> <ul style="list-style-type: none"> ▪ Specific actions have been carried out to underpin the promotion of entrepreneurship taking into account the Small Business Act (SBA): 		
<ul style="list-style-type: none"> – <i>a monitoring mechanism to ensure the implementation of the SBA including a body in charge of coordinating SME issues across different administrative levels (“SME Envoy”):</i> <ul style="list-style-type: none"> ▪ SME envoy has been nominated, provided with human resources and having a standing with the administration; ▪ monitoring mechanism has been set up at national/regional level including stakeholder consultation, ensuring a regular and structured monitoring process, building on existing structures and processes as appropriate. 		
<ul style="list-style-type: none"> – <i>measures to reduce the time to set-up business to 3 working days and the cost to max. 100€:</i> <ul style="list-style-type: none"> ▪ measures to reduce the time to set-up business to 3 working days are in place; ▪ measures to reduce the cost to set-up business to max. 100€ are in place. 		
<ul style="list-style-type: none"> – <i>measures to reduce the time needed to get licenses and permits to take up and perform the specific activity of an enterprise up to 3 months are in place.</i> 		
<ul style="list-style-type: none"> – <i>a mechanism for systematic assessment of the impact of legislation on SMEs using an "SME test" while taking into account differences in the size of enterprises, where relevant:</i> <ul style="list-style-type: none"> ▪ SME test is in place comprising three main steps: <ul style="list-style-type: none"> ○ preliminary assessment of businesses to be affected ○ measurement of the impact on SMEs (cost/benefit analysis) ○ use of mitigating measures, if appropriate. 		
<i>Transposition into national law of Directive (2011/7/EU) of the European Parliament:</i>		
<ul style="list-style-type: none"> ▪ Transposition of Directive (2011/7/EU) in accordance with Article 12 of this Directive (by 16 March 2013). 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Think Small First - A Small Business Act for Europe (COM(2008) 394 of 23.6.2008):

http://eur-lex.europa.eu/Result.do?T1=V5&T2=2008&T3=394&RechType=RECH_naturel&Submit=Search

- Conclusions of the Competitiveness Council: Think Small First – A Small Business Act for Europe (doc. 16788/08, 1.12.2008):

<http://register.consilium.europa.eu/pdf/en/08/st16/st16788.en08.pdf>

- Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Review of the "Small Business Act" for Europe (COM(2008) 78 final, 23.2.2011):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0078:FIN:en:PDF>

- Conclusions of the Competitiveness Council: Conclusions on the Review of the "Small Business Act" for Europe (doc. 10975/11 of 30.5.2011):

<http://register.consilium.europa.eu/pdf/en/11/st10/st10975.en11.pdf>

- Directive (2011/7/EU) of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:048:0001:01:EN:HTML>

2. Extracts of relevant documents

- Council Conclusions on the Review of the "Small Business Act" for Europe, as adopted by the Council (Competitiveness) on 30 May 2011.

THE COUNCIL OF THE EUROPEAN UNION,
(.....)

11. INVITES the Member States to apply the ‘SME test’ rigorously, while taking into account the differences in the sizes of the enterprises and to apply the “Think Small First” principle not only to legislation but also to administrative procedures affecting SMEs; INVITES the Member States to avoid over-implementation of EU legislation (‘gold plating’) as a matter of principle and WELCOMES the Commission readiness to assist the Member States in this task;
(.....)

13. ENCOURAGES the Member States, where appropriate, to reduce the start-up time for new enterprises to 3 working days and the cost to €100 by 2012, as well as the time needed to get licenses and permits to take up and perform the specific activity of an enterprise to three months by the end of 2013; from some obligations of Directive 78/660/EEC;
(.....)

19. ENCOURAGES the Member States to implement the Directive to combat late payments as soon as possible but at the latest within the implementation period; and innovative public procurement as an instrument for fostering the growth of innovative SMEs.

- Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions Text with EEA relevance (*Official Journal L 048 , 23/02/2011 P. 0001 – 0010*)

Article 1

Subject matter and scope

1. The aim of this Directive is to combat late payment in commercial transactions, in order to ensure the proper functioning of the internal market, thereby fostering the competitiveness of undertakings and in particular of SMEs.
 2. This Directive shall apply to all payments made as remuneration for commercial transactions.
 3. Member States may exclude debts that are subject to insolvency proceedings
- [...]

Article 8

Transparency and awareness raising

1. Member States shall ensure transparency regarding the rights and obligations stemming from this Directive, including by making publicly available the applicable rate of statutory interest for late payment.
2. The Commission shall make publicly available on the Internet details of the current statutory rates of interest which apply in all the Member States in the event of late payment in commercial transactions.
3. Member States shall, where appropriate, use professional publications, promotion campaigns or any other functional means to increase awareness of the remedies for late payment among undertakings.
4. Member States may encourage the establishment of prompt payment codes which set out clearly defined payment time limits and a proper process for dealing with any payments that are in dispute, or any other initiatives that tackle the crucial issue of late payment and contribute to developing a culture of prompt payment which supports the objective of this Directive.

[...]

Article 10

Recovery procedures for unchallenged claims

1. Member States shall ensure that an enforceable title can be obtained, including through an expedited procedure and irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor’s action or application at the court or other competent authority, provided that the debt or aspects of the

procedure are not disputed. Member States shall carry out this duty in accordance with their respective national laws, regulations and administrative provisions.

2. National laws, regulations and administrative provisions shall apply the same conditions for all creditors who are established in the Union.

3. When calculating the period referred to in paragraph 1, the following shall not be taken into account:

(a) periods for service of documents;

(b) any delays caused by the creditor, such as periods devoted to correcting applications.

4. This Article shall be without prejudice to the provisions of Regulation (EC) No 1896/2006.

[...]

Article 12

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 8 and 10 by 16 March 2013. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the repealed Directive shall be construed as references to this Directive. The methods of making such reference and the formulation of such statement shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Member States may maintain or bring into force provisions which are more favourable to the creditor than the provisions necessary to comply with this Directive.

4. In transposing the Directive, Member States shall decide whether to exclude contracts concluded before 16 March 2013.

3. Further reading

- DG ENTR SMEs and SBA
http://ec.europa.eu/enterprise/policies/sme/links/index_en.htm
- Handbook on State aid rules for SMEs:
http://ec.europa.eu/competition/state_aid/studies_reports/sme_handbook.pdf
- RIS3 guide (see namely annexes: Innovation friendly business environment for SMEs and internationalization)
<http://s3platform.jrc.ec.europa.eu/s3pguide>
- The smart guide to innovation-based incubators (IBI)
<http://s3platform.jrc.ec.europa.eu/guides>
- European Small Business Portal
http://ec.europa.eu/small-business/index_en.htm
- EEN – ENTREPRISE EUROPEAN NETWORK
<http://portal.enterprise-europe-network.ec.europa.eu/>

DRAFT

A. 4-1 Energy efficiency in infrastructure, public buildings, housing sector²²

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
4. Supporting the shift towards a low carbon economy in all sectors (Referred to in Article 9(4))	ERDF + CF: - supporting energy efficiency and renewable energy use in public infrastructures, including in public buildings, and in the housing sector	4.1. Actions have been carried out to promote cost-effective improvements of energy end use efficiency and cost-effective investment in Energy efficiency when constructing or renovating buildings.	The actions are: – Measures to ensure minimum requirements are in place related to the energy performance of buildings consistent with Article 3, Article 4 and Article 5 of Directive 2010/31/EU. – Measures necessary to establish a system of certification of the energy performance of buildings consistent with Article 11 of Directive 2010/31/EU. – Measures consistent with art. 13 of Directive 2006/32/EC on energy end-use efficiency and energy services to ensure the provision to final customers of individual meters in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings.

1. When to assess applicability?

The conditionality is applicable if a Member State is planning to allocate funding to supporting energy efficiency in public infrastructures, including in public buildings, and in the housing sector (Art. 5 (4) (c) of the ERDF Regulation and Art. 3 (a) (iii) of the CF Regulation).

2. Definitions (extracts from Directive 2010/31/EU and Directive 2012/27/EU)

Public infrastructures means infrastructures which are:

- Owned and/or operated by a public body; and
- Used to perform public services of general economic interest as defined in the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (2012/C8/02); or
- Used to perform other, non-economic activities of national, regional or local government, e.g. administrative, legislative, authoritative functions.

²² The text of the table is based on the Council Compromise text of 24 April 2012.

Policy measure means a regulatory, financial, fiscal, voluntary or information provision instrument formally established and implemented in a Member State to create a supportive framework, requirement or incentive for market actors to provide and purchase energy services and to undertake other energy efficiency improvement measures;

Energy performance of a building means the calculated or measured amount of energy needed to meet the energy demand associated with a typical use of the building, which includes, inter alia, energy used for heating, cooling, ventilation, hot water and lighting;

Energy performance certificate means a certificate recognised by a Member State or by a legal person designated by it, which indicates the energy performance of a building or building unit, calculated according to a methodology adopted in accordance with Article 3 EPBD.

Cost-optimal level means the energy performance level which leads to the lowest cost during the estimated economic lifecycle, where:

- a) The lowest cost is determined taking into account energy-related investment costs, maintenance and operating costs (including energy costs and savings, the category of building concerned, earnings from energy produced), where applicable, and disposal costs, where applicable; and EN L 153/18 Official Journal of the European Union 18.6.2010;
- b) The estimated economic lifecycle is determined by each Member State. It refers to the remaining estimated economic lifecycle of a building where energy performance requirements are set for the building as a whole, or to the estimated economic lifecycle of a building element where energy performance requirements are set for building elements.

The cost-optimal level shall lie within the range of performance levels where the cost benefit analysis calculated over the estimated economic lifecycle is positive.

3. Source of information for assessment

- Overview of all notified legislation by Member States transposing Directive 2010/31/EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32012R0244:EN:NOT>

- NIF Database (Internal Commission IT support tool for the management of infringements and the transposition of directives).

Reports from the Member States to the Commission regarding all data and assumptions used for calculations of cost-optimal levels, and the results of those calculations.

These reports may be included in the National Energy Efficiency Action Plans, but in any case should be submitted to the Commission by 21 March 2013²³ with updates at regular intervals not longer than five years.

²³ These reports shall be sent one year after the publication of the Commission Delegated Regulation No. 244/2012 on a cost optimal methodology framework (which was published on 21 March 2012).

- Overview of all notified legislation by Member States transposing Directive 2012/27/EU

NIF Database (including all notifications required by the Directive)

Annual reports provided by Member States each year by 30 April and National Energy Efficiency Action Plans (NEEAPs) provided by Member States by 30 April 2014 and every three years thereafter.

4. Rationale for the *ex ante* conditionality

Effective energy efficiency measures require a clear policy framework to ensure that incentives for investments trigger those investments that provide the greatest efficiency gains.

However, failure to address administrative and other non-financial barriers, as well as lack of a strategic approach to meet targets can undermine efforts and lead to poor use of public resources.

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Measures to ensure minimum requirements related to energy performance are in place consistent with Article 3, Article 4 and Article 5 of Directive 2010/31/EU:</i></p> <ul style="list-style-type: none"> ▪ Member State and/or its regions have adopted a methodology for calculating the energy performance of buildings (the deadline provided by the Directive was 9 January 2013) ▪ The methodology is in conformity with Annex I, in particular: <ul style="list-style-type: none"> ○ The energy performance of a building is determined on the basis of the calculated or actual annual energy that is consumed. ○ Methodology reflects heating and cooling and domestic hot water needs. ○ The energy performance of a building is expressed in a transparent manner and includes an energy performance indicator and a numeric indicator of primary energy use. ○ Methodology takes into consideration aspects influencing energy performance listed below: <ul style="list-style-type: none"> - Characteristics of the building and of energy installations: heating, hot water supply, air conditioning, ventilation, lighting, solar system and protection, indoor climate conditions, etc. (point 3 of Annex I) - Aspects likely to influence positively energy performance: local solar exposure conditions, active solar systems and other heating and electricity systems based on renewable energy; electricity produced by cogeneration; district or block heating and cooling systems; natural lighting, etc. (point 4 of Annex I). ▪ Measures are in place to ensure that minimum energy performance requirements for buildings or building units are set with a view to achieving cost-optimal levels (the deadline provided by the Directive to adopt them for building occupied by public authorities was 9 January 2013 and for other buildings 9 July 2013): <ul style="list-style-type: none"> ○ Cost-optimal levels of minimum energy performance requirements have been calculated according to the comparative methodology framework established by the Commission for different building category (Annex I of the Commission delegated regulation No 244/2012). The deadline for this was 21 March 2013. ○ The Member State has provided a list of measures (e.g. regulatory, fiscal and financial 		

<p>incentives, etc.) that were already adopted to improve energy efficiency in buildings (including their respective expected results);</p> <ul style="list-style-type: none"> ○ It gives evidence that those measures were selected according to the outcome of the calculation of the cost-optimal levels of minimums energy performance requirements. 		
<p><i>Measures necessary to establish a system of certification of the energy performance of buildings consistent with Article 11 of Directive 2010/31/EU:</i></p> <ul style="list-style-type: none"> ▪ Energy performance certificates are in place to make it possible for owners or tenants of buildings or building units to compare and assess its energy performance (reference of the national / regional regulatory framework); ▪ The certificates contain at least the following information: energy performance of the building, reference values such as minimum energy performance requirements, and recommendations for the cost-optimal or cost-effective improvement of the energy performance of the building or building unit. It also provides an indication as to where the owner or tenant can receive more detailed information. 	<i>t</i>	
<p><i>Measures to ensure the provision to final customers of individual meters consistent with Article 13 of Directive 2006/32/EC. (The deadline provided by the Directive was 17 May 2008).</i></p> <ul style="list-style-type: none"> ▪ The Member State has established the regulatory framework to ensure that accurate individual meters providing information on actual energy consumption and actual time of use of electricity, natural gas, district heating/cooling and domestic hot water are always provided to final customers, in case of new buildings or buildings undergoing major renovation or if the cost is proportionate in relation to the potential energy savings in the other cases. ▪ The regulatory framework is in place to ensure that, where appropriate, billing performed by energy distributors, distribution system operators and retail energy sales companies is based on actual energy consumption, presented in clear and understandable terms and performed frequently to enable customers to regulate their own energy consumption. ▪ The Member State can give evidence that, where appropriate, the following information is made available to final customers in clear and understandable terms in their bills, contracts, transactions, and /or receipts at distribution stations: current actual prices and actual consumption of energy; comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, contact information (consumers' organisations, energy agencies or similar bodies, including website addresses) to get information on available energy efficiency improvement measures, etc. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- **Directive 2010/31/EU on the energy performance of buildings (recast)**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010L0031:EN:NOT>

Commission delegated regulation No 244/2012 of 16 January 2012 supplementing Directive 2010/31/EU by establishing a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0018:0036:EN:PDF>

Guidelines accompanying Commission Delegated Regulation (EU) No 244/2012 (2012/C 115/01)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:115:0001:0028:EN:PDF>

- **Directive 2006/32/EC on energy end-use efficiency and energy services**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0032:EN:NOT>

This directive requires Member States to ensure that final customers are provided with competitively priced individual meters that accurately reflect their actual energy consumption and provide information on actual time of use. In most cases, this requirement is subject to the conditions that it should be technically possible, financially reasonable, and proportionate in relation to the potential energy savings. When a connection is made in a new building or a building undergoes major renovations, as defined in Directive 2010/31/EU, such individual meters should, however, always be provided. Directive 2006/32/EC also requires that clear billing based on actual consumption should be provided frequently enough to enable consumers to regulate their own energy use.²⁴

The Directive remains fully applicable until it shall be repealed by Directive 2012/27/EU on 5 June 2014, except for Annexes I, II and IV to Directive 2006/32/EC, which shall be repealed with effect from 1 January 2017.

- **Directive 2012/27/EU on energy efficiency and repealing Directives 2004/8/EC on cogeneration and 2006/32/EC on energy end-use efficiency and energy services**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:EN:PDF>

²⁴ Recital 30 of Directive 2012/27/EU.

2. Extract of relevant documents

- Directive 2010/31/EU on the energy performance of buildings (recast)

Article 3

Adoption of a methodology for calculating the energy performance of buildings

Member States shall apply a methodology for calculating the energy performance of buildings in accordance with the common general framework set out in Annex I.

This methodology shall be adopted at national or regional level.

Article 4

Setting of minimum energy performance requirements

1. Member States shall take the necessary measures to ensure that minimum energy performance requirements for buildings or building units are set with a view to achieving cost-optimal levels. The energy performance shall be calculated in accordance with the methodology referred to in Article 3. Cost-optimal levels shall be calculated in accordance with the comparative methodology framework referred to in Article 5 once the framework is in place.

Member States shall take the necessary measures to ensure that minimum energy performance requirements are set for building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels.

When setting requirements, Member States may differentiate between new and existing buildings and between different categories of buildings.

These requirements shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building.

A Member State shall not be required to set minimum energy performance requirements which are not cost-effective over the estimated economic lifecycle.

Minimum energy performance requirements shall be reviewed at regular intervals which shall not be longer than five years and, if necessary, shall be updated in order to reflect technical progress in the building sector.

2. Member States may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:

(a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;

(b) buildings used as places of worship and for religious activities;

(c) temporary buildings with a time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;

(d) residential buildings which are used or intended to be used for either less than four months of the year or, alternatively, for a limited annual time of use and with an expected energy consumption of less than 25 % of what would be the result of all-year use;

(e) stand-alone buildings with a total useful floor area of less than 50 m².

Article 5

Calculation of cost-optimal levels of minimum energy performance requirements

1. The Commission shall establish by means of delegated acts in accordance with Articles 23, 24 and 25 by 30 June 2011 a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements.

The comparative methodology framework shall be established in accordance with Annex III and shall differentiate between new and existing buildings and between different categories of buildings.

2. Member States shall calculate cost-optimal levels of minimum energy performance requirements using the comparative methodology framework established in accordance with paragraph 1 and relevant parameters, such as climatic conditions and the practical accessibility of energy infrastructure, and compare the results of this calculation with the minimum energy performance requirements in force.

Member States shall report to the Commission all input data and assumptions used for those calculations and the results of those calculations. The report may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC. Member States shall submit those reports to the Commission at regular intervals, which shall not be longer than five years. The first report shall be submitted by 30 June 2012.

3. If the result of the comparison performed in accordance with paragraph 2 shows that the minimum energy performance requirements in force are significantly less energy efficient than cost-optimal levels of minimum energy performance requirements, the Member State concerned shall justify this difference in writing to the Commission in the report referred to in paragraph 2, accompanied, to the extent that the gap cannot be justified, by a plan outlining appropriate steps to significantly reduce the gap by the next review of the energy performance requirements as referred to in Article 4(1).

4. The Commission shall publish a report on the progress of the Member States in reaching cost-optimal levels of minimum energy performance requirements.

[...]

Article 11

Energy performance certificates

1. Member States shall lay down the necessary measures to establish a system of certification of the energy performance of buildings. The energy performance certificate shall include the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance.

The energy performance certificate may include additional information such as the annual energy consumption for non-residential buildings and the percentage of energy from renewable sources in the total energy consumption.

2. The energy performance certificate shall include recommendations for the cost-optimal or cost-effective improvement of the energy performance of a building or building unit, unless there is no reasonable potential for such improvement compared to the energy performance requirements in force.

The recommendations included in the energy performance certificate shall cover:

(a) measures carried out in connection with a major renovation of the building envelope or technical building system(s); and

(b) measures for individual building elements independent of a major renovation of the building envelope or technical building system(s).

3. The recommendations included in the energy performance certificate shall be technically feasible for the specific building and may provide an estimate for the range of payback periods or cost-benefits over its economic lifecycle.

4. The energy performance certificate shall provide an indication as to where the owner or tenant can receive more detailed information, including as regards the cost-effectiveness of the recommendations made in the energy performance certificate. The evaluation of cost effectiveness shall be based on a set of standard conditions, such as the assessment of energy savings and underlying energy prices and a preliminary cost forecast. In addition, it shall contain information on the steps to be taken to implement the recommendations. Other information on related topics, such as energy audits or incentives of a financial or other nature and financing possibilities may also be provided to the owner or tenant.

5. Subject to national rules, Member States shall encourage public authorities to take into account the leading role which they should play in the field of energy performance of buildings, inter alia, by implementing the recommendations included in the energy performance certificate issued for buildings owned by them within its validity period.

6. Certification for building units may be based:

(a) on a common certification of the whole building; or

(b) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building.

7. Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.

8. The validity of the energy performance certificate shall not exceed 10 years.

9. The Commission shall, by 2011, in consultation with the relevant sectors, adopt a voluntary common European Union certification scheme for the energy performance of non-residential buildings. That measure shall be adopted in accordance with the advisory procedure referred to in Article 26(2). Member States are encouraged to recognise or use the scheme, or use part thereof by adapting it to national circumstances.

[...]

ANNEX I

Common general framework for the calculation of energy performance of buildings

(referred to in Article 3)

1. The energy performance of a building shall be determined on the basis of the calculated or actual annual energy that is consumed in order to meet the different needs associated with its typical use and shall reflect the heating energy needs and cooling energy needs (energy needed to avoid overheating) to maintain the envisaged temperature conditions of the building, and domestic hot water needs.

2. The energy performance of a building shall be expressed in a transparent manner and shall include an energy performance indicator and a numeric indicator of primary energy use, based on primary energy factors per energy carrier, which may be based on national or regional annual weighted averages or a specific value for on-site production.

The methodology for calculating the energy performance of buildings should take into account European standards and shall be consistent with relevant Union legislation, including Directive 2009/28/EC.

3. The methodology shall be laid down taking into consideration at least the following aspects:

(a) the following actual thermal characteristics of the building including its internal partitions:

- (i) thermal capacity;
 - (ii) insulation;
 - (iii) passive heating;
 - (iv) cooling elements; and
 - (v) thermal bridges;
- (b) heating installation and hot water supply, including their insulation characteristics;
- (c) air-conditioning installations;
- (d) natural and mechanical ventilation which may include air-tightness;
- (e) built-in lighting installation (mainly in the non-residential sector);
- (f) the design, positioning and orientation of the building, including outdoor climate;
- (g) passive solar systems and solar protection;
- (h) indoor climatic conditions, including the designed indoor climate;
- (i) internal loads.
4. The positive influence of the following aspects shall, where relevant in the calculation, be taken into account:
- (a) local solar exposure conditions, active solar systems and other heating and electricity systems based on energy from renewable sources;
 - (b) electricity produced by cogeneration;
 - (c) district or block heating and cooling systems;
 - (d) natural lighting.
5. For the purpose of the calculation buildings should be adequately classified into the following categories:
- (a) single-family houses of different types;
 - (b) apartment blocks;
 - (c) offices;
 - (d) educational buildings;
 - (e) hospitals;
 - (f) hotels and restaurants;
 - (g) sports facilities;
 - (h) wholesale and retail trade services buildings;
 - (i) other types of energy-consuming buildings.
- [...]

ANNEX III

Comparative methodology framework to identify cost-optimal levels of energy performance requirements for buildings and building elements

The comparative methodology framework shall enable Member States to determine the energy performance of buildings and building elements and the economic aspects of measures relating to the energy performance, and to link them with a view to identifying the cost-optimal level.

The comparative methodology framework shall be accompanied by guidelines outlining how to apply this framework in the calculation of cost-optimal performance levels.

The comparative methodology framework shall allow for taking into account use patterns, outdoor climate conditions, investment costs, building category, maintenance and operating costs (including energy costs and savings), earnings from energy produced, where applicable, and disposal costs, where applicable. It should be based on relevant European standards relating to this Directive.

The Commission shall also provide:

- guidelines to accompany the comparative methodology framework; these guidelines will serve to enable the Member States to undertake the steps listed below,
- information on estimated long-term energy price developments.

For the application of the comparative methodology framework by Member States, general conditions, expressed by parameters, shall be laid down at Member State level.

The comparative methodology framework shall require Member States to:

- define reference buildings that are characterised by and representative of their functionality and geographic location, including indoor and outdoor climate conditions. The reference buildings shall cover residential and non-residential buildings, both new and existing ones,
- define energy efficiency measures to be assessed for the reference buildings. These may be measures for individual buildings as a whole, for individual building elements, or for a combination of building elements,
- assess the final and primary energy need of the reference buildings and the reference buildings with the defined energy efficiency measures applied,
- calculate the costs (i.e. the net present value) of the energy efficiency measures (as referred to in the second indent) during the expected economic lifecycle applied to the reference buildings (as referred to in the first indent) by applying the comparative methodology framework principles.

By calculating the costs of the energy efficiency measures during the expected economic lifecycle, the cost-effectiveness of different levels of minimum energy performance requirements is assessed by the Member States. This will allow the determination of cost-optimal levels of energy performance requirements.

- Directive 2006/32/EC on energy end-use efficiency and energy services

CHAPTER III

PROMOTION OF ENERGY END-USE EFFICIENCY AND ENERGY SERVICES

Article 13

Metering and informative billing of energy consumption

1. Member States shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural gas, district heating and/or cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

When an existing meter is replaced, such competitively priced individual meters shall always be provided, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term. When a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2002/91/EC, such competitively priced individual meters shall always be provided.

2. Member States shall ensure that, where appropriate, billing performed by energy distributors, distribution system operators and retail energy sales companies is based on actual energy consumption, and is presented in clear and understandable terms. Appropriate information shall be made available with the bill to provide final customers with a comprehensive account of current energy costs. Billing on the basis of actual consumption shall be performed frequently enough to enable customers to regulate their own energy consumption.

3. Member States shall ensure that, where appropriate, the following information is made available to final customers in clear and understandable terms by energy distributors, distribution system operators or retail energy sales companies in or with their bills, contracts, transactions, and/or receipts at distribution stations:

(a) current actual prices and actual consumption of energy;

(b) comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, preferably in graphic form;

(c) wherever possible and useful, comparisons with an average normalised or benchmarked user of energy in the same user category;

(d) contact information for consumers' organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and/or objective technical specifications for energy-using equipment.

- Directive 2012/27/EU on energy efficiency and repealing Directives 2004/8/EC on cogeneration and 2006/32/EC on energy end-use efficiency and energy services

CHAPTER I

SUBJECT MATTER, SCOPE, DEFINITIONS AND ENERGY EFFICIENCY TARGETS

Article 3

Energy efficiency targets

1. Each Member State shall set an indicative national energy efficiency target, based on either primary or final energy consumption, primary or final energy savings, or energy intensity. Member States shall notify those targets to the Commission in accordance with Article 24(1) and Annex XIV Part 1. When doing so, they shall also express those targets in terms of an absolute level of primary energy consumption and final energy consumption in 2020 and shall explain how, and on the basis of which data, this has been calculated.

[...]

CHAPTER II

EFFICIENCY IN ENERGY USE

Article 4

Building renovation

Member States shall establish a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private. This strategy shall encompass:

- (a) an overview of the national building stock based, as appropriate, on statistical sampling;
- (b) identification of cost-effective approaches to renovations relevant to the building type and climatic zone;
- (c) policies and measures to stimulate cost-effective deep renovations of buildings, including staged deep renovations;
- (d) a forward-looking perspective to guide investment decisions of individuals, the construction industry and financial institutions;
- (e) an evidence-based estimate of expected energy savings and wider benefits.

A first version of the strategy shall be published by 30 April 2014 and updated every three years thereafter and submitted to the Commission as part of the National Energy Efficiency Action Plans.

Article 5

Exemplary role of public bodies' buildings

1. Without prejudice to Article 7 of Directive 2010/31/EU, each Member State shall ensure that, as from 1 January 2014, 3 % of the total floor area of heated and/or cooled buildings owned and occupied by its central government is renovated each year to meet at least the minimum energy performance requirements that it has set in application of Article 4 of Directive 2010/31/EU.

[...]

5. For the purposes of paragraph 1, by 31 December 2013, Member States shall establish and make publicly available an inventory of heated and/or cooled central government buildings with a total useful floor area over 500 m² and, as of 9 July 2015, over 250 m², excluding buildings exempted on the basis of paragraph 2. The inventory shall contain the following data:

- (a) the floor area in m²; and
- (b) the energy performance of each building or relevant energy data.

6. Without prejudice to Article 7 of Directive 2010/31/EU, Member States may opt for an alternative approach to paragraphs 1 to 5 of this Article, whereby they take other cost-effective measures, including deep renovations and measures for behavioural change of occupants, to achieve, by 2020, an amount of energy savings in eligible buildings owned and occupied by their central government that is at least equivalent to that required in paragraph 1, reported on an annual basis.

For the purpose of the alternative approach, Member States may estimate the energy savings that paragraphs 1 to 4 would generate by using appropriate standard values for the energy consumption of reference central government buildings before and after renovation and according to estimates of the surface of their stock. The categories of reference central government buildings shall be representative of the stock of such buildings.

Member States opting for the alternative approach shall notify to the Commission, by 31 December 2013, the alternative measures that they plan to adopt, showing how they would achieve an equivalent improvement in the energy performance of the buildings within the central government estate.

7. Member States shall encourage public bodies, including at regional and local level, and social housing bodies governed by public law, with due regard for their respective competences and administrative set-up, to:

(a) adopt an energy efficiency plan, freestanding or as part of a broader climate or environmental plan, containing specific energy saving and efficiency objectives and actions, with a view to following the exemplary role of central government buildings laid down in paragraphs 1, 5 and 6;

(b) put in place an energy management system, including energy audits, as part of the implementation of their plan;

(c) use, where appropriate, energy service companies, and energy performance contracting to finance renovations and implement plans to maintain or improve energy efficiency in the long term.

[...]

CHAPTER V

FINAL PROVISIONS

[...]

Article 24

Review and monitoring of implementation

1. By 30 April each year as from 2013, Member States shall report on the progress achieved towards national energy efficiency targets, in accordance with Part 1 of Annex XIV. The report may form part of the National Reform Programmes referred to in Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union (1).

2. By 30 April 2014, and every three years thereafter, Member States shall submit National Energy Efficiency Action Plans. The National Energy Efficiency Action Plans shall cover significant energy efficiency improvement measures and expected and/ or achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use, in view of achieving the national energy efficiency targets referred to in Article 3(1). The National Energy Efficiency Action Plans shall be complemented with updated estimates of expected overall primary energy consumption in 2020, as well as estimated levels of primary energy consumption in the sectors indicated in Part 1 of Annex XIV.

The Commission shall, by 31 December 2012, provide a template as guidance for the National Energy Efficiency Action Plans. That template shall be adopted in accordance with the advisory procedure referred to in Article 26(2). The National Energy Efficiency Action Plans shall in any case include the information specified in Annex XIV.

[...]

Article 27

Amendments and repeals

1. Directive 2006/32/EC is repealed from 5 June 2014, except for Article 4(1) to (4) thereof and Annexes I, III and IV thereto, without prejudice to the obligations of the Member States relating to the time-limit for its transposition into national law. Article 4(1) to (4) of, and Annexes I, III and IV to Directive 2006/32/EC shall be repealed with effect from 1 January 2017.

Directive 2004/8/EC is repealed from 5 June 2014, without prejudice to the obligations of the Member States relating to the time-limit for its transposition into national law.

[...]

Article 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 June 2014.

Notwithstanding the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4, the first subparagraph of Article 5(1), Article 5(5), Article 5(6), the last subparagraph of Article 7(9), Article 14(6), Article 19(2), Article 24(1) and Article 24(2) and point (4) of Annex V by the dates specified therein.

They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. Further reading

- DG ENER: National Energy Efficiency Action Plans
http://ec.europa.eu/energy/efficiency/end-use_en.htm
- DG ENER: New Energy Efficiency Directive
http://ec.europa.eu/energy/efficiency/eed/eed_en.htm
- DG ENER: Energy Performance of Buildings Directive
http://ec.europa.eu/energy/efficiency/buildings/buildings_en.htm
- DG ENER: Financing energy efficiency:
http://ec.europa.eu/energy/efficiency/financing/financing_en.htm
- DG ENER: Energy Performance Contracting
http://ec.europa.eu/energy/efficiency/financing/campaign_en.htm
- DG ENER: The European Strategic Energy Technology Plan:
http://ec.europa.eu/energy/technology/set_plan/set_plan_en.htm
- DG CNECT: ICT for Energy Efficiency – Local and Regional Initiatives (“Wiki”):
http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?doc_id=1797

DRAFT

A. 4-2 Cogeneration²⁵

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>4. Supporting the shift towards a low carbon economy in all sectors</p> <p>(Referred to in Article 9(4))</p>	<p>ERDF:</p> <ul style="list-style-type: none"> - Promotion of high-efficiency co-generation of heat and power 	<p>4.2 Actions have been carried out to promote high-efficiency co-generation of heat and power.</p>	<p>The actions are :</p> <p>Support for co-generation is based on useful heat demand and primary energy savings consistent with Article 7.1 and 9.1. (a) and (b) of Directive 2004/8/EC.</p> <p>Member States or their competent bodies have evaluated the existing legislative and regulatory framework with regard to authorisation procedures or other procedures in order to:</p> <ul style="list-style-type: none"> a) encourage the design of co-generation units to match economically justifiable demands for useful heat output and avoid production of more heat than useful heat; and b) reduce the regulatory and non-regulatory barriers to an increase in co-generation.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding to the promotion of high-efficiency co-generation of heat and power (Art.5 (4) (g) of the ERDF Regulation).

2. Definitions

Cogeneration (Combined Heat and Power or CHP) is the simultaneous production of electricity and heat, both of which are used. The central and most fundamental principle of cogeneration is that, in order to maximise the many benefits that arise from it, systems should be based according to the heat demand of the application. This can be an individual building, an industrial factory or town/city served by district heat/cooling. Through the utilisation of the heat, the efficiency of cogeneration plant can reach up to 90% or more. Cogeneration can offer energy savings up to 40% or even more when compared against the supply of electricity and heat from conventional power stations and boilers.

High-efficiency cogeneration is defined in the Cogeneration Directive 2004/8/EC as cogeneration that saves at least 10% of primary energy compared with the references for separate production of heat and electricity.

²⁵ The text of the table is based on the Council Compromise text of 24 April 2012.

Useful heat means heat produced in a cogeneration process to satisfy an economically justifiable demand for heat or cooling"

Investments in combined heat and power (CHP) and district heating should be based on so called useful heat demand. This means that investments on improving EE and reducing energy demand have to be carried out in a *first step*, and only the *remaining* heat demand should be the basis for investments in CHP and district heating, in a *second step*. In order to achieve this in a proper way, the investments have to be part of an overall coherent low-carbon strategy.

3. Source of information for assessment

- National reports

Member States had to publish a report with the results of the analysis and evaluations carried out in accordance with Articles 5(3), 6(1), 9(1) and 9(2) on their mechanism for accurate and reliable guarantees of origin, the national potential for the application of high-efficiency cogeneration, including micro-cogeneration, and administrative procedures and barriers not later than 21 February 2006. In addition, every four years Member States have to evaluate progress towards increasing the share of high-efficiency cogeneration and publish a report with the result of the evaluation, the first progress report being due on 21 February 2007 and the second progress report on 11 October 2011:

- link to reports of 2006 and 2007 in original language:

http://ec.europa.eu/energy/efficiency/cogeneration/doc/ms_reports_original.zip

- link to reports of 2006 and 2007 translated into English:

http://ec.europa.eu/energy/efficiency/cogeneration/doc/ms_reports_translated.zip

- link to reports of 2011 in original language:

http://ec.europa.eu/energy/efficiency/cogeneration/cogeneration_en.htm

- link to the report of 2011 translated into English

http://ec.europa.eu/energy/efficiency/cogeneration/cogeneration_en.htm

- Progress report by the Commission

The Commission reviews the application of the Directive and submits a report on this review to the European Parliament and to the Council not later than 21 February 2008, and a progress report every four years afterwards. The first Commission progress report was published as part of the Second Strategic Energy Review in the document entitled "Europe can save more energy by combined heat and power generation" COM(2008) 771 final:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0771:EN:NOT>

- Background report on implementing the cogeneration directive and Annex prepared in the frame of the Impact Assessment for the proposal on a Directive on Energy Efficiency

http://ec.europa.eu/energy/efficiency/eed/doc/2011_directive/sec_2011_0779_ia_annexes.pdf

- Progress Report on energy efficiency in the EU

It includes synthesis of the assessment of the second National Energy Efficiency Action Plans of EU Member States as required by Directive 2006/32/EC on energy end-use efficiency and energy services as well as an overview of the progress in the implementation of combined heat and power as required by Directive 2004/8/EC and an overview of financing instruments addressing improvements of energy efficiency in buildings as required by Art.10(2) of Directive 2010/31/EU on energy performance in buildings.

http://ec.europa.eu/energy/efficiency/end-use_en.htm

4. Rationale for the *ex ante* conditionality

Cogeneration measures require a clear policy framework to ensure that incentives for investments trigger those investments that provide the greatest efficiency gains.

However, failure to address administrative and other non-financial barriers, as well as lack of a strategic approach to meet targets can undermine efforts and lead to poor use of public resources.

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Support for co-generation is based on useful heat demand and primary energy savings consistent with Article 7.1 and 9.1 (a) and (b) of Directive 2004/8/EC</i></p> <ul style="list-style-type: none"> ▪ An analysis of the national potentials for high-efficiency cogeneration has been conducted (references to be provided to the Commission) ▪ It contains the following elements: <ul style="list-style-type: none"> ○ It identifies all potential for useful heating and cooling demands ○ It includes appropriate mechanisms to assess the cost effectiveness — in terms of primary energy savings — of increasing the share of high-efficiency cogeneration in the national energy mix. The analysis of cost effectiveness should also take into account national commitments accepted in the context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. 		
<p><i>Member States or their competent bodies have evaluated the existing legislative and regulatory framework with regard to authorisation procedures or other procedures in order to:</i></p> <p><i>a) encourage the design of co-generation units to match economically justifiable demands for useful heat output and avoid production of more heat than useful heat; and</i></p> <ul style="list-style-type: none"> ▪ Authorisation procedures for individual installations include criteria to take into account the results of cost-benefit analyses for the application of high-efficiency cogeneration and efficient district heating and cooling (references to be provided to the Commission) 		
<p><i>Member States or their competent bodies have evaluated the existing legislative and regulatory framework with regard to authorisation procedures or other procedures in order to:</i></p> <p><i>b) reduce the regulatory and non-regulatory barriers to an increase in co-generation.</i></p> <ul style="list-style-type: none"> ▪ The Member State has conducted a diagnostic of barriers, which may prevent the realisation of the national potential for high-efficiency cogeneration (barriers relating to the prices and costs of and access to fuels, barriers in relation to grid system issues, barriers in relation to administrative procedures, and barriers relating to the lack of internalisation of the external costs in energy prices) ▪ Member State provides a list of measures tackling these barriers. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- **Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0008:EN:NOT>

The Directive remains fully applicable until it shall be repealed by Directive 2012/27/EU by 5 June 2014.

Commission Decision 2008/952/EC establishing detailed guidelines for the implementation and application of Annex II to Directive 2004/8/EC:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0952:EN:NOT>

Commission Implementing Decision 2011/877/EU establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC repealing Commission Decision 2007/74/EC:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0877:EN:NOT>

Interpretation of Article 8(1) of Directive 2004/8/EC (SWD 2012/13):

<http://ec.europa.eu/energy/efficiency/cogeneration/doc/2012swd0013.pdf>

- **Directive 2012/27/EU on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:EN:PDF>

2. Extracts of relevant documents

- Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC

Article 6

National potentials for high-efficiency cogeneration

1. Member States shall establish an analysis of the national potential for the application of high-efficiency cogeneration, including high-efficiency micro-cogeneration.

2. The analysis shall:

— be based on well-documented scientific data and comply with the criteria listed in Annex IV,

— identify all potential for useful heating and cooling demands, suitable for application of high-efficiency cogeneration, as well as the availability of fuels and other energy resources to be utilised in cogeneration,

— include a separate analysis of barriers, which may prevent the realisation of the national potential for high-efficiency cogeneration. In particular, this analysis shall consider barriers relating to the prices and costs of and access to fuels, barriers in relation to grid system issues, barriers in relation to administrative procedures, and barriers relating to the lack of internalisation of the external costs in energy prices.

3. Member States shall for the first time not later than 21

February 2007 and thereafter every four years, following a request by the Commission at least six months before the due date, evaluate progress towards increasing the share of high-efficiency cogeneration.

Article 7

Support schemes

1. Member States shall ensure that support for cogeneration — existing and future units — is based on the useful heat demand and primary energy savings, in the light of opportunities available for reducing energy demand through other economically feasible or environmental advantageous measures like other energy efficiency measures.

[...]

Article 9

Administrative procedures

1. Member States or the competent bodies appointed by the Member States shall evaluate the existing legislative and regulatory framework with regard to authorisation procedures or the other procedures laid down in Article 6 of Directive 2003/54/ EC, which are applicable to high-efficiency cogeneration units.

Such evaluation shall be made with a view to:

(a) encouraging the design of cogeneration units to match economically justifiable demands for useful heat output and avoiding production of more heat than useful heat;

(b) reducing the regulatory and non-regulatory barriers to an increase in cogeneration;

[...]

ANNEX IV

Criteria for analysis of national potentials for high-efficiency cogeneration

(a) The analysis of national potentials referred to in Article 6 shall consider:

— the type of fuels that are likely to be used to realise the cogeneration potentials, including specific considerations on the potential for increasing the use of renewable energy sources in the national heat markets via cogeneration,

— the type of cogeneration technologies as listed in Annex I that are likely to be used to realise the national potential,

— the type of separate production of heat and electricity or, where feasible, mechanical energy that high-efficiency cogeneration is likely to substitute,

— a division of the potential into modernisation of existing capacity and construction of new capacity.

b) The analysis shall include appropriate mechanisms to assess the cost effectiveness — in terms of primary energy savings — of increasing the share of high-efficiency cogeneration in the national energy mix. The analysis of cost effectiveness shall also take into account national commitments accepted in the context of the climate change commitments accepted by the Community pursuant to the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

(c) The analysis of the national cogeneration potential shall specify the potentials in relation to the timeframes 2010, 2015 and 2020 and include, where feasible, appropriate cost estimates for each of the timeframes.

3. Further reading

DRAFT

A. 4-3 Renewable energy²⁶

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
4. Supporting the shift towards a low carbon economy in all sectors (Referred to in Article 9(4))	ERDF + CF: Promoting the production and distribution of renewable energy sources	4.3 Actions have been carried out to promote the production and distribution of renewable energy sources.	<ul style="list-style-type: none"> – Transparent support schemes, priority in grid access or guaranteed access and priority in dispatching, as well as standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public are in place consistent with Article 14 (1) Article 16 (2) and 16 (3) of Directive 2009/28/EC. – A Member State has adopted a national renewable energy action plan consistent with Article 4 of Directive 2009/28/EC.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding to promoting the production and distribution of energy from renewable sources (Art. 5 (4) (a) of the ERDF Regulation and Art. 3 (a) (i) of the CF Regulation).

2. Definitions (from Directive 2009/28/EC)

Energy from renewable sources means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases.

Support scheme means any instrument, scheme or mechanism applied by a Member State or a group of Member States, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments.

²⁶ The text of the table is based on the Council Compromise text of 24 April 2012.

3. Source of information for assessment

- National reports

Member States are required to submit a report to the Commission on progress in the promotion and use of energy from renewable sources by 31 December 2011, and every two years thereafter. The reports have to provide information on the introduction and functioning of support schemes and other measures to promote energy from renewable sources, on measures taken to ensure the transmission and distribution of electricity produced from renewable energy sources and on measures to improve the framework or rules for bearing and sharing of costs referred to in Article 16(3):

- *link to progress reports in the original language*

http://ec.europa.eu/energy/renewables/transparency_platform/doc/article_22_progress_reports/article_22_progress_reports_original_language.zip

- *links to the progress reports translated into English:*

http://ec.europa.eu/energy/renewables/transparency_platform/doc/article_22_progress_reports/article_22_progress_reports_english_language.zip

- National renewable energy action plans

http://ec.europa.eu/energy/renewables/action_plan_en.htm

- Information on support schemes and measures can be found in section 4.2.4 of the NREAPs (1st criteria)
- Information on Priority or guaranteed access to the grid system and priority in dispatching can be found in sections 4.2.7 and 4.3 of the NREAPs (1st criteria)
- Information on standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public can be found in section 4.2.6 of the NREAPs (1st criteria)

- Progress report by the Commission

Starting from 2012, the Commission produces every two years a "Progress Report" assessing, among other things, Member States' development in the promotion and use of renewable energy.

http://ec.europa.eu/energy/renewables/reports/2011_en.htm

4. Rationale for the *ex ante* conditionality

Renewable energy measures require a clear policy framework to ensure that incentives for investments trigger those investments that provide the greatest efficiency gains.

However, failure to address administrative and other non-financial barriers, as well as lack of a strategic approach to meet targets can undermine efforts and lead to poor use of public resources.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Transparent support schemes, priority in grid access or guaranteed access and priority in dispatching, as well as standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public are in place consistent with Article 14 (1) Article 16 (2) and 16 (3) of Directive 2009/28/EC.</i></p> <ul style="list-style-type: none"> ▪ Transparent support schemes [Article 14 (1)] <ul style="list-style-type: none"> ○ Information on support measures is made available to all relevant actors (e.g. as consumers, builders, installers, architects and suppliers of heating, cooling and electricity equipment and systems and of vehicles compatible with the use of energy from renewable sources): references or/and links should be provided to the Commission ▪ Priority or guaranteed access to the grid system and priority in dispatching [Article 16 (2)] <ul style="list-style-type: none"> ○ Subject to requirements related to the reliability and safety of the grid, MS ensures to electricity from renewable energy sources priority or guaranteed access to the grid system and priority in dispatching: references or/and links to the law, delegated acts (ordinances) or procedural rules of network operators should be provided to the Commission ▪ Standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public [Article 16 (3)] <ul style="list-style-type: none"> ○ National transmission system operators and distribution system operators set up and publish their standard rules related to the bearing and sharing of costs of technical adaptations: references or/and links to these rules should be provided to the Commission. 		

A Member State has adopted a national renewable energy action plan consistent with Article 4 of Directive 2009/28/EC.

- Member State has adopted a national renewable energy action plan
- This plan meets the following requirements :
 - The plan sets out national 2020 targets in electricity, transport and heating & cooling
 - The plan includes adequate measures to achieve these national overall targets, including:
 - cooperation between local, regional and national authorities
 - measures to develop existing/mobilise new biomass resources, which are adequate to achieve the technology-specific targets set out in the sections 5.1 and 5.2
 - measures to fulfil the requirements included in the articles 13 to 19 of Directive 2009/28/EC (administrative procedures applying to plants or transmission and distribution network infrastructures should be proportionate and necessary; information on support measures and the costs and benefits of equipment using renewable energy should be made publicly available; origins of electricity, heating and cooling produced from renewable energy sources should be guaranteed; priority access to the grid should be given to electricity produced from renewable energy sources; member State should ensure sustainability of biofuels and bioliquids)
 - The plan follows the template provided by the European Commission (see in the Annex of Decision 2009/548/EC)

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0028:EN:NOT>

- Commission Decision of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009D0548:EN:NOT>

2. Extract of relevant documents

- Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

Article 4

National renewable energy action plans

1. Each Member State shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Member States' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.

By 30 June 2009, the Commission shall adopt a template for the national renewable energy action plans. That template shall comprise the minimum requirements set out in Annex VI. Member States shall comply with that template in the presentation of their national renewable energy action plans.

2. Member States shall notify their national renewable energy action plans to the Commission by 30 June 2010.

3. Each Member State shall publish and notify to the Commission, six months before its national renewable energy action plan is due, a forecast document indicating:

(a) its estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other Member States in accordance with Articles 6 to 11, as well as its estimated potential for joint projects, until 2020; and

(b) its estimated demand for energy from renewable sources to be satisfied by means other than domestic production until 2020.

That information may include elements relating to cost and benefits and financing. That forecast shall be updated in the reports of the Member States as set out in Article 22(1)(l) and (m).

4. A Member State whose share of energy from renewable sources fell below the indicative trajectory in the immediately preceding two-year period set out in part B of Annex I, shall submit an amended national renewable energy action plan to the Commission by 30 June of the following year, setting out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in part B of Annex I.

The Commission may, if the Member State has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Member State, adopt a decision to release the Member State from the obligation to submit an amended national renewable energy action plan.

5. The Commission shall evaluate the national renewable energy action plans, notably the adequacy of the measures envisaged by the Member State in accordance with Article 3(2). In response to a national renewable energy action plan or to an amended national renewable energy action plan, the Commission may issue a recommendation.

6. The Commission shall send to the European Parliament the national renewable energy action plans and the forecast documents in the form as made public on the transparency platform as referred to in Article 24(2), as well as any recommendation as referred to in paragraph 5 of this Article.

[...]

Article 14

Information and training

1. Member States shall ensure that information on support measures is made available to all relevant actors, such as consumers, builders, installers, architects, and suppliers of heating, cooling and electricity equipment and systems and of vehicles compatible with the use of energy from renewable sources.

[...]

Article 16

Access to and operation of the grids

2. Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria defined by the competent national authorities:

(a) Member States shall ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources;

(b) Member States shall also provide for either priority access or guaranteed access to the grid-system of electricity produced from renewable energy sources;

(c) Member States shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria. Member States shall ensure that appropriate grid and market-related operational measures are taken in order to minimise the curtailment of electricity produced from renewable energy sources. If significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the national electricity system and security of energy supply, Member States shall ensure that the responsible system operators report to the competent regulatory authority on those measures and indicate which corrective measures they intend to take in order to prevent inappropriate curtailments.

3. Member States shall require transmission system operators and distribution system operators to set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections and grid reinforcements, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid.

Those rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of those producers to the grid and of the particular circumstances of producers located in peripheral regions and in regions of low population density. Those rules may provide for different types of connection.

- Commission Decision of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council

ANNEX

TABLE OF CONTENTS

1. Summary of national renewable energy policy
2. Expected Final Energy Consumption 2010-2020
3. Renewable energy targets and trajectories
3.1. National overall target
3.2. Sectoral targets and trajectories
4. Measures for achieving the targets
4.1. Overview of all policies and measures to promote the use of energy from renewable resources
4.2. Specific measures to fulfil the requirements under Articles 13, 14, 16 and Articles 17 to 21 of Directive 2009/28/EC
4.2.1. Administrative procedures and spatial planning (Article 13(1) of Directive 2009/28/EC)
4.2.2. Technical specifications (Article 13(2) of Directive 2009/28/EC)
4.2.3. Buildings (Article 13(3) of Directive 2009/28/EC)
4.2.4. Information provisions (Articles 14(1), 14(2) and 14(4) of Directive 2009/28/EC)
4.2.5. Certification of installers (Article 14(3) of Directive 2009/28/EC)
4.2.6. Electricity infrastructure development (Article 16(1) and Article 16(3) to (6) of Directive 2009/28/EC)
4.2.7. Electricity network operation (Article 16(2) and Article 16(7) and (8) of Directive 2009/28/EC)
4.2.8. Biogas integration into the natural gas network (Article 16(7) and Article 16(9) and (10) of Directive 2009/28/EC)
4.2.9. District heating and cooling infrastructure development (Article 16(11) of Directive 2009/28/EC)
4.2.10. Biofuels and other bioliquids — sustainability criteria and verification of compliance (Articles 17 to 21 of Directive 2009/28/EC)
4.3. Support schemes to promote the use of energy from renewable resources in electricity applied by the Member State or a group of Member States
4.4. Support schemes to promote the use of energy from renewable resources in heating and cooling applied by the Member State or a group of Member States
4.5. Support schemes to promote the use of energy from renewable resources in transport applied by the Member State or a group of Member States
4.6. Specific measures for the promotion of the use of energy from biomass
4.6.1. Biomass supply: both domestic and trade
4.6.2. Measures to increase biomass availability, taking into account other biomass users (agriculture and forest-based sectors)
4.7. Planned use of statistical transfers between Member States and planned participation in joint projects with other Member States and third countries
4.7.1. Procedural aspects
4.7.2. Estimated excess production of renewable energy compared to the indicative trajectory which could be transferred to other Member States
4.7.3. Estimated potential for joint projects

4.7.4. Estimated demand for renewable energy to be satisfied by means other than domestic production

5. Assessments.

5.1. Total contribution expected of each renewable energy technology to meet the binding 2020 targets and the indicative interim trajectory for the shares of energy from renewable resources in electricity, heating and cooling and transport

5.2. Total contribution expected from energy efficiency and energy saving measures to meet the binding 2020 targets and the indicative interim trajectory for the shares of energy from renewable resources in electricity, heating and cooling and transport.

5.3. Assessment of the impacts (Optional)

5.4. Preparation of the national Renewable Energy Action Plan and the follow-up of its implementation.

3. Further reading

For further information on renewable energy:

<http://ec.europa.eu/energy/renewables>

DRAFT

A. 5 Risk prevention and management²⁷

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
5. Promoting climate change adaptation and risk prevention (referred to in Article 9(5))	ERDF+ CF: Promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems	<i>5.1 Risk prevention and risk management:</i> The existence of national or regional risk assessments for disaster management taking into account climate change adaptation	A national or regional risk assessment with the following elements shall be in place: <ul style="list-style-type: none"> – A description of the process, methodology, methods and non-sensitive data used for risk assessment as well as of the risk-based criteria for the prioritisation of investment; – A description of single-risk and multi-risk scenarios; – Taking into account, where appropriate, national climate change adaptation strategies.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding to promote investment to address specific risks, ensuring disaster resilience and developing disaster management systems (Art. 5 (5) (b) of the ERDF Regulation and Art. 3 (b) (ii) of the CF Regulation).

Examples of possible actions which could come up under this priority:

- Development of national/regional/local "knowledge base" (scientific background studies & reports; monitoring systems; ICT development such as use of satellite data ;...)
- Development of strategies (e.g. adaptation strategies) & action plans for risk prevention and management
- Ecosystem-based solutions: floodplains, wetland preservation, forest management, soil management
- Risk prevention & management plans at national, regional and local level
- Flood and coastal defence (dykes, reservoirs...)
- Risk assessment and early warning tools (detection, early warning and alert systems, implementation of the 112 system, risk mapping and assessment)

²⁷ The table below is based on the Council compromise text.

- Enhance risk management capabilities at relevant levels (e.g. through the development and implementation of specific training infrastructure and programmes, exercises, crisis communication, implementation of the host-nation support guidelines)
- Awareness raising and education
- Support to highly specialised response units / civil protection modules /procurement of relevant response assets
- "Disaster proofing" infrastructure (transport, health...)
- Cross-border natural risk prevention & management
- Macro-regional approaches to adaptation & risk preventions
- Post disaster recovery and rehabilitation taking into account prevention concerns and lessons learnt

2. Definitions (based on ISO 31010, risk management, risk assessment techniques)

Risks: According to ISO 31010, risks are the combination of the consequences of an event or hazard and the associated likelihood of its occurrence. Consequences are the negative effects of a disaster expressed in terms of human impacts, economic and environmental impacts, and political/social impacts.

Risk assessment means the overall cross-sectorial process of risk identification, risk analysis, and risk evaluation undertaken at national or appropriate sub-national level.

Risk identification is the process of finding, recognizing and recording risks. Risk identification methods can include (for more details see Annex 3 of the Commission Staff Working Paper, p.41-42):

- evidence based methods, examples of which are check-lists and reviews of historical data;
- systematic team approaches where a team of experts follow a systematic process to identify risks by means of a structured set of prompts or questions;
- inductive reasoning techniques, such as HAZOP (hazard and operability study)

Risk analysis is the process to comprehend the nature of risk and to determine the level of risk. Methods used in analysing risks can be qualitative (assessment by significance levels such as “high”, “medium” and “low”), semi-quantitative (combination of numerical rating scales to produce a level of risk using a formula) or quantitative (estimation of practical values).

Risk evaluation is the process of comparing the results of risk analysis with risk criteria to determine whether the risk and/or its magnitude is acceptable or tolerable.

A common approach is to divide risks into three bands:

- an upper band where the level of risk is regarded as intolerable whatever benefits the activity may bring, and risk treatment is essential whatever its cost;
- a middle band (or 'grey' area) where costs and benefits, are taken into account and opportunities balanced against potential consequences;
- a lower band where the level of risk is regarded as negligible, or so small that no risk treatment measures are needed.

Risk scenarios are a plausible description of how the future may develop. Scenario building is mainly based on experiences from the past, but also events and impacts which have so far not occurred should be considered. Scenarios should be based on a coherent and internally consistent set of assumptions about key relationships and driving forces.

Single-risk assessments determine the singular risk (i.e. likelihood and consequences) of one particular hazard (e.g. flood) or one particular type of hazard (e.g. flooding) occurring in a particular geographic area during a given period of time.

Multi-risk assessments determine the total risk from several hazards either occurring at the same time or shortly following each other, because they are dependent from one another or because they are caused by the same triggering event or hazard; or merely threatening the same elements at risk (vulnerable/ exposed elements) without chronological coincidence.

Human impacts are defined as the quantitative measurement of the following factors: number of deaths, number of severely injured or ill people, and number of permanently displaced people.

Economic and environmental impacts are the sum of the costs of cure or healthcare, cost of immediate or longer-term emergency measures, costs of restoration of buildings, public transport systems and infrastructure, property, cultural heritage, etc., costs of environmental restoration and other environmental costs (or environmental damage), costs of disruption of economic activity, value of insurance pay-outs, indirect costs on the economy, indirect social costs, and other direct and indirect costs, as relevant.

Political/social impacts are usually rated on a semi-quantitative scale and may include categories such as public outrage and anxiety, encroachment of the territory, infringement of the international position, violation of the democratic system, and social psychological impact, impact on public order and safety, political implications, psychological implications, and damage to cultural assets, and other factors considered important which cannot be measured in single units, such as certain environmental damage.

3. Source of information for assessment

To date, the European Commission has received national risk assessments from 11 EU countries participating in the Community Civil Protection Mechanism (Participating States): UK, Netherlands, Italy, Estonia, Poland, Czech Republic, Slovenia, Sweden, Denmark, Hungary and Germany.

The Commission understands that other countries and in particular Ireland and Latvia will shortly submit some information on progress. As part of the Baltic Sea Strategy, a regional project covering ten Baltic countries is due to report in June 2013.

Regional risk assessments are also being developed by some Member States.

4. Rationale for the *ex ante* conditionality

The lack of relevant risk prevention and management strategies / plans at national/regional level could undermine the effectiveness of the Funds' intervention.

Without a consistent climate forecast and plan to act climate change, adaptation measures can be inefficient and even counterproductive (maladaptation, e.g. increased use of irrigation against drought)

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national or regional risk assessment with the following elements shall be in place:</i></p> <ul style="list-style-type: none"> ▪ A national or regional risk assessment is in place²⁸ 		
<p>– <i>A description of the process, methodology, methods and non-sensitive data used for risk assessment as well as of the risk-based criteria for the prioritisation of investment;</i></p> <ul style="list-style-type: none"> ▪ The existing national or regional risk assessments fulfil the requirements of a risk assessment process (ISO 31010) including: <ul style="list-style-type: none"> ○ The process of producing a national or regional risk assessment has involved a wide range of actors and stakeholders (e.g. one coordinating authority has been designated; working groups involving public authorities from different levels, research and business, non-governmental organisations have been planned); ○ The risk assessment has considered all three categories of impacts (human, economic and environmental, and political and social impacts); ○ Stakeholders and interested parties have been widely consulted on the draft risk assessments and information has been disseminated towards the general public on the process and the outcomes of risk assessment; ○ Cross-border issues have been addressed. ▪ The prioritisation of investments has been based on the risk assessment, providing the list of major risks to treat. 		
<p>– <i>A description of single-risk and multi-risk scenarios.</i></p> <ul style="list-style-type: none"> ▪ Single-risk and multi-risk scenarios have been elaborated. ▪ A description of these scenarios is available. 		
<p>– <i>Taking into account, where appropriate, national climate change adaptation strategies.</i></p> <ul style="list-style-type: none"> ▪ National climate change adaptation strategies address the impact of climate change on health, agriculture and forest, biodiversity and ecosystems, water, costal and marine areas, and 		

²⁸ For some projects, the existence of a regional risk assessment is more appropriate than national risk assessment.

infrastructures and constructions.

- The Climate change adaptation strategies have been taken into account to prioritise the investments to address specific risks, ensuring disaster resilience and developing disaster management systems.

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

a) Main sources of commitments

- Conclusions of the Justice and Home Affairs Council of 11-12 April 2011, Conclusion on further developing risk assessments for disaster management in the European Union

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121462.pdf

Member were invited to provide the Commission by the end of 2011 with the information available on progress as regards their work on national risk assessments, and in particular a description of the process, methodology, methods, and non-sensitive data used for national risk assessments, non-sensitive details of the assumptions and risk scenarios, and non-sensitive information on the results of the national risk analysis.

- Proposal for a decision of the European Parliament and of the Council on a Union Civil Protection Mechanism (COM(2011) 934 final) of 20 December 2011– to be adopted by July 2013 (articles 5 and 6 on prevention)

http://ec.europa.eu/echo/files/about/COM_2011_proposal-decision-CPMechanism_en.pdf

A Presidency compromise text has been adopted by the Council on 7 November 2012 (see below).

b) Additional useful sources of information

- Commission Staff Working Paper on "Risk assessment and Mapping Guidelines for Disaster Management" (21 December 2010)

http://ec.europa.eu/echo/files/about/COMM_PDF_SEC_2010_1626_F_staff_working_document_en.pdf

- Commission's White paper on Adapting to climate change: Towards a European framework for action (COM(2009) 147 final – 1st April 2009)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0147:FIN:EN:PDF>

- Council Conclusions on a Community framework on disaster prevention within the EU (15394/09 - 30 November 2009)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/111537.pdf

2. Extract of relevant documents

- Council conclusions on Further Developing Risk Assessment for Disaster Management within the European Union (11-12 April 2011)

The Council adopted the following conclusions:

"1. Recalling the 2009 Council conclusions on a Community framework on disaster prevention within the EU²⁹ which highlighted the potential added value of an EU dimension in areas of risk identification and analysis, impact analysis, risk assessment and matrices, scenario development and risk management measures and invited the Commission to develop guidelines, in a concerted action with Member States, taking into account work at national level on methods of risk mapping, assessments and analyses, in order to facilitate Member States' action in these areas and to ensure better comparability between the methods used by Member States;

2. Recalling that before the end of 2011, the Member States are invited to further develop national approaches to, and procedures for, risk management, including risk analyses, covering the potential major natural and man-made disasters, taking into account the future impact of climate change, and recalling that before the end of 2012 the Commission, using the available national risk analysis and taking into account the future impact of climate change and the need for climate adaptation, is to prepare a cross-sectoral overview of the major natural and man-made risks that the EU may face in the future and on this basis identify risks or types of risks that would be shared by Member States or regions in different Member States;

3. Considering that coherent national risk assessments will underpin a common understanding in the EU of the risks faced by Member States and the EU, and will facilitate cooperation on efforts to prevent and mitigate shared risks, such as cross-border risks, and considering that comparability of risk assessment methods would add value to the individual efforts of Member States and would allow risk assessments to be shared between regions or Member States facing the same or similar risks;

4. Considering that evidence-based risk assessments and risk mapping contribute to ensuring that policy decisions are prioritised in ways which address the most severe risks with the overall aim of disaster prevention;

5. Recalling the Stockholm Programme - "An open and secure Europe serving and protecting citizens"³⁰; recalling the Commission Communication on the EU Internal Security Strategy in Action: Five steps towards a more secure Europe³¹, announcing the development, together with Member States, of EU risk assessment and mapping guidelines for disaster management, based on a multi-hazard and multi-risk approach, covering in principle all natural and manmade disasters including the consequences of terrorism, and stipulating that by 2014 the EU should establish a coherent risk management policy linking threat and risk assessments to decision-making;

6. Considering that it would be appropriate for the Member States and the Union to identify, analyse, evaluate, communicate, and address the risks they face in terms of likelihood³² of an incident, vulnerability and its impacts;

7. Taking into account existing EU legislation in order to ensure conformity with relevant initiatives, such as the INSPIRE Directive³³ and the GMES Regulation³⁴, and the need for complementarity with other relevant EU legislation, such as the Floods Directive³⁵, the Seveso II Directive³⁶, the Nuclear Safety Directive³⁷ and the Directive on European Critical Infrastructures³⁸;

²⁹ 15394/09.

³⁰ 5731/10.

³¹ 16797/10.

³² Likelihood can mean either quantitatively measured probability or qualitatively judged plausibility of an event occurring.

³³ Directive 2007/2/EC of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJ L 108, 25.4.2007, p. 1.

³⁴ Regulation (EU) No 911/2010 of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013), OJ L 276, 20.10.2010, p. 1

³⁵ Directive 2007/60/EC of 23 October 2007 on the assessment and management of flood risks, OJ L 288, 6.11.2007, p. 27.

³⁶ Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, OJ L 10, 14.1.1997, p.13.

8. Emphasises that risk assessment can help to improve disaster management by enhancing the basis for the analysis of prevention and preparedness measures as well as for capacity analysis and capability planning, and is a continuous and necessary building block for the development of a coherent risk management policy;

9. Welcomes the Commission's Guidelines on Risk Assessment and Mapping for Disaster Management³⁹;

10. Invites the Commission to:

a) support Member States in their efforts to initiate developing national risk assessments by the end of 2011, by, inter alia,

- making available appropriate examples of good practice for different types of risk scenarios,

- facilitating the exchange of best practices and lessons learned regarding the development and implementation of risk assessment methods between Member States,

- disseminating the results of studies which could contribute to risk assessment mapping for disaster management in a useable format,

- organising dedicated workshops and expert meetings so as to be able to get Member

States' experts acquainted with the risk assessment methodology as described in the Commission's Guidelines on Risk Assessment and Mapping for Disaster Management,

- supporting analysis of relevant aspects of existing EU legislation which would need to be taken into account;

b) further elaborate the best use of risk mapping as a supporting tool in the risk assessment process in respect of the existing sectoral EU legislation;

c) build on risk assessment work as the essential input for capacity analysis and capability planning with a view to developing a coherent risk management policy at EU level in respect of the existing sectoral EU legislation;

d) update Member States on progress and make use of the relevant expertise of the Member States in developing an overview of the risks the EU may face in the future; and by early 2012, report on information that Member States have provided with regard to risks of relevance to the development of that overview;

e) amend the Risk Assessment and Mapping Guidelines for Disaster Management in order to make it clear that consequences of terrorist attacks should be taken into account;

11. Invites the Member States to:

a) identify a single point of contact to coordinate the work on national risk assessments;

b) organise appropriate coordination between relevant stakeholders in the various risks, in order to agree on and define a common understanding of risk terminology and methodology and enable the establishment and assessment of relevant risk scenarios;

c) provide relevant non-sensitive information⁴⁰ to the general public and stakeholders on the results of risk assessments, in order to raise awareness and enhance preventive measures and preparedness;

³⁷ Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations, OJ L 172, 2.7.2009, p. 18.

³⁸ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, OJ L 345, 23.12.2008, p.75.

³⁹ 17833/10, SEC(2010) 1626.

⁴⁰ Documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:

- the protection of national security (i.e. State security), defence, or public security;

- statistical or commercial confidentiality, Directive 2003/98/EC of 17 November 2003 on the re-use of public sector information, OJ L 345, 31.12.2003, p. 90.

d) identify and analyse single-risk scenarios, and also strive to consider significant multi-risk scenarios, where possible;

e) use good practice whenever possible, bearing in mind in particular the examples of good practice for various types of risk scenarios that the Commission and others may provide as guidance;

f) where appropriate, employ both qualitative and quantitative methods in risk assessments;

g) take into consideration the available results of national risk assessments for the purposes of appropriate capacity analysis and capability planning, as part of prevention and preparedness, in order to further develop a national disaster risk management policy in respect of the existing sectoral EU legislation;

h) share information and good practice with other Member States and the Commission, in particular for similar and shared risks, with a view to developing closer cooperation in the field of risk management;

i) provide the Commission by the end of 2011 with the information available on progress, and in particular:

- a description of the process, methodology, methods, and non-sensitive data used for national risk assessments;
- non-sensitive details of the assumptions and risk scenarios, and non-sensitive information on the results of the national risk analysis;
- a description of impacts and likelihood resulting from the risk scenario analysis in an appropriately disaggregated format, e.g. separately for human, economic, environmental and other impacts, such as political, social/psychological, in line with the EU guidelines;
- a short list of risk scenarios in an order enabling identification of risks likely to be shared by Member States, and including low-probability, high-impact risks which Member States acting alone would be unlikely to be able to address;
- any other risks considered important for the EU overview, including low probability,
- high-impact risks;

12. Invites the Commission, in close cooperation with Member States, to regularly update the Guidelines on Risk Assessment and Mapping for Disaster Management in the light of advances in research and implementation experience in Member States, in particular in the areas of terminology, methodology, impact assessment and scenarios."

- Proposal for a decision of the European Parliament and of the Council on a Union Civil Protection Mechanism (COM(2011) 934 final) of 20 December 2011

Presidency compromise (7 November 2012)

(based on 11799/4/12 REV 4)

Article 4

Definitions

For the purpose of this Decision, the following definitions shall apply:

[...]

3. "preparedness" means a state of readiness and capability of human and material means, structures, communities and organisations enabling them to ensure an effective rapid response to a disaster obtained as a result of action taken in advance

4. "prevention" means any action aimed at reducing risks or mitigating adverse consequences of disasters to people, the environment, property, including cultural heritage
5. "early warning" means the timely and effective provision of information that allows action to be taken to avoid or reduce risks and adverse impacts of a disaster and to facilitate preparedness for an effective response;
6. "module" means a self-sufficient and autonomous predefined task- and needs-driven arrangement of Member States' capabilities or a mobile operational team of the Member States, representing a combination of human and material means that can be described in terms of its capacity for intervention or by the task(s) it is able to undertake
- [...]
8. "risk assessment" means the overall cross-sectoral process of risk identification, risk analysis, and risk evaluation undertaken at national or appropriate sub-national level.
9. "risk management capability" means the ability of a Member State or its regions to reduce, adapt to and/or mitigate risks (impacts and likelihood) identified in its risk assessments to levels acceptable in that Member State. Risk management capability can be assessed in terms of the capacity (technical, financial, administrative) to carry out adequate (1) risk assessments (2) risk management planning (for prevention and preparedness), and (3) risk prevention and preparedness measures.
10. "host nation support" means any action undertaken in the preparedness and response phases by a country receiving or sending assistance, or the Commission, and transit countries to remove foreseeable obstacles to the delivery and use of international assistance offered through the Union Mechanism, including support from Member States to facilitate the transiting of this assistance through their territory;

[...]

CHAPTER II

Prevention

Article 5

Prevention actions

1. To fulfil the prevention objectives and actions, the Commission shall:
- (a) take action to improve the knowledge base on disaster risks and facilitate the sharing of knowledge, best practices and information, including among Member States that share common risks;
- (b) support and promote Members States' risk assessment and mapping activity through the sharing of good practice, and facilitating access to specific knowledge and expertise on issues of common interest;
- (c) establish and regularly update ~~a~~ cross-sectoral overview of [major] natural and man-made disaster risks the Union may face following a coherent approach across different policy areas that may address or affect disaster prevention;
- (d) promote and support the development and implementation of Members States' risk management ~~plans~~ activity through the sharing of good practice, and facilitating access to specific knowledge and expertise on issues of common interest;
- (e) compile and disseminate the information made available by Member States, organise an exchange of experience about the assessment of risk management capability, develop, together with the Member States, guidelines on the content, methodology and structure of these assessments, and facilitate the sharing of good practice in prevention and preparedness planning, including through voluntary peer reviews;
- (f) report regularly to the European Parliament and the Council on the progress made in the implementation of Article 6;
- (g) highlight the importance of risk prevention and support Member States in awareness-raising, public information, and education;

(h) promote prevention measures in Member States [and third countries, referred to in Article 28] through the sharing of good practice, and facilitating access to specific knowledge and expertise on issues of common interest;

(i) in agreement with Member States, take additional necessary supporting and complementary prevention action in order to achieve the objective specified in point (a) of Article 3(1).

2. Upon request of a Member State, third country, the United Nations or its agencies, the Commission may support the provision of advice on prevention measures through the deployment of an expert team on site.

Article 6

Risk management

In order to promote an effective and coherent approach to disaster prevention and preparedness by sharing non-sensitive information and best practices within the Union Mechanism, Member States shall:

1) make available to the Commission a summary of relevant elements of their risk assessments at national or appropriate sub-national level two years following the entry into force of this Decision and then every three years;

2) develop and refine their disaster risk management planning at national or appropriate sub-national level;

3) make available to the Commission the assessment of their risk management capability at national or appropriate sub-national level every ~~two~~ three years following the finalisation of the relevant guidelines (in Article 5);

4) participate, on a voluntary basis, in peer reviews on the assessment of risk management capability.

3. Further reading

ISO 31010 - Risk management — Risk assessment techniques

http://www.previ.be/pdf/31010_FDIS.pdf

A. 6-1 Water⁴¹

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
6. Protecting the environment and promoting the sustainable use of resources [referred to in Article 9(6)]	ERDF +CF: Addressing the significant needs for investment in the water sector to meet the requirements of the environmental acquis	<i>6.1 Water sector:</i> The existence of a) a water pricing policy which provides adequate incentives for users to use water resources efficiently and b) an adequate contribution of the different water uses to the recovery of the costs of water services at a rate determined in the approved river basin management plan for investment supported by the programmes.	<ul style="list-style-type: none"> - A Member State has ensured a contribution of the different water uses to the recovery of the costs of water services by sector consistent with Article 9, paragraph 1, first indent of Directive 2000/60/EC having regard, where appropriate, to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected. - The adoption of a river basin management plan for the river basin district with a justified concentration of investments consistent with Article 13 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

1. When to assess applicability?

The water conditionality applies at the level of the investment priority/specific objective; therefore, individual investments or projects planned to recover the costs of water use do not need to be included in the assessment of the conditionality per se.

The conditionality is applicable, if a MS is planning to allocate funding to addressing the significant needs for investment in the water sector to meet the requirements of the Union's environmental *acquis* (Art. 5 (6) (b) of the ERDF Regulation and Art.3 (c) (ii) of the CF Regulation).

2. Definitions (Water Framework Directive)

Water services: means all services which provide, for households, public institutions or any economic activity:

(a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater,

⁴¹ The table below is based on the Council compromise text.

(b) waste-water collection and treatment facilities which subsequently discharge into surface water.

Recovery of costs for water services:

Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs associated with damage or negative impact on the aquatic environment and in accordance in particular with the polluter pays principle. An economic analysis of water services based on long-term forecasts of supply and demand for water in the river basin district will be necessary for this purpose (see Annex III of the Directive – enclosed to this fiche).

River basin district means the area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters, which is identified as the main unit for management of river basins.

Surface water means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters.

Groundwater means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

Inland water means all standing or flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of territorial waters is measured.

Transitional waters are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows.

Coastal water means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters.

Protected areas include (according to Annex VI of the Directive):

- areas designated for the abstraction of water intended for human consumption
- areas designated for the protection of economically significant aquatic species;
- bodies of water designated as recreational waters, including areas designated as bathing waters under Directive 76/160/EEC;
- nutrient-sensitive areas, including areas designated as vulnerable zones under Directive 91/676/EEC and areas designated as sensitive areas under Directive 91/271/EEC;
- areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in their protection, including relevant Natura 2000 sites designated under Directive 92/43/EEC (1) and Directive 79/409/EEC (2).

They should be registered according to the Directive.

- Water pricing policy means a mix of economic policy instruments aiming at setting up the proper price for water services providing adequate incentives for users to use water efficiently.

3. Source of information for assessment

- River Basin Management Plans
<http://www.eea.europa.eu/themes/water/water-management/river-basin-management-plans-and-programme-of-measures>
- The Commission's assessment of the 1st River Basin Management Plans (RBMPs) for 2009-2015
http://ec.europa.eu/environment/water/participation/map_mc/map.htm
- Water Framework Directive implementation websites of Member States:
http://ec.europa.eu/environment/water/water-framework/links/index_en.htm

4. Rationale for the *ex ante* conditionality

The viability of water sector investments depends on appropriate pricing mechanisms that ensure adequate returns at an acceptable price to users.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Ensuring a contribution of the different water uses to the recovery of the costs of water services by sector consistent with Article 9, paragraph 1, indent 1 of Directive 2000/60/EC, having regard, where appropriate, to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.</i></p> <ul style="list-style-type: none"> ▪ The Member States has undertaken the economic analysis described in Annex III of the Directive 2000/60/EC. ▪ A water pricing policy as required by Article 9 paragraph 1, first indent of Directive 2000/60/EC is in place. This policy should take into account: <ul style="list-style-type: none"> ○ the overall economic analysis (mentioned above); ○ the principle of recovery of the cost of water services; ○ where appropriate, the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected; ○ the polluter pays principle. 		
<p><i>Adoption of a river basin management plan for the river basin district with a justified concentration of investments consistent with Article 13 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.</i></p> <ul style="list-style-type: none"> ▪ The Member State has adopted river basin management plans covering the territories covered by OPs which include water investment priorities. ▪ The assessment will focus on whether the plans adequately address the following elements extracted from Annex VII of the Directive, which details the minimum requirements of the river basin management plans (RBMP). Therefore, each of the RBMP should include: <ul style="list-style-type: none"> ○ A map of the monitoring networks established for the purposes of Article 8 and Annex V, and a presentation in map form of the results of the monitoring programmes carried out under those provisions for the status of surface water (ecological and chemical); groundwater (chemical and quantitative); and protected areas. With no monitoring in place, water status is unknown and no measure can be 		

implemented.

- A list of environmental objectives established under Article 4 for surface waters, groundwater and protected areas, including in particular identification of instances where use has been made of Article 4(4), (5), (6) and (7) (see in Annex to this fiche), and the associated information required under that article. If this is not done, it is not possible to see how a proposed project will fit into the picture.
- A report on the practical steps and measures taken to apply the principle of recovery of the costs of water use in accordance with Article 9.
- A summary of the measures taken under Article 11(5) for bodies of water which are unlikely to achieve the objectives set out under Article 4. Indeed, if a project concerns an area in which the objectives for the water bodies are unlikely to be achieved, it is necessary to see how such project fits in the MS plans to address the problem.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0060:EN:NOT>

2. Extract of relevant documents

- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

Article 4

Environmental objectives

1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

(i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

(iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

(iv) Member States shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;

(b) for groundwater

(i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

Measures to achieve trend reversal shall be implemented in accordance with paragraphs 2, 4 and

5 of Article 17, taking into account the applicable standards set out in relevant Community legislation, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(c) for protected areas

Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.

[...]

4. The deadlines established under paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when all of the following conditions are met:

(a) Member States determine that all necessary improvements in the status of bodies of water cannot reasonably be achieved within the timescales set out in that paragraph for at least one of the following reasons:

(i) the scale of improvements required can only be achieved in phases exceeding the timescale, for reasons of technical feasibility;

(ii) completing the improvements within the timescale would be disproportionately expensive;

(iii) natural conditions do not allow timely improvement in the status of the body of water.

(b) Extension of the deadline, and the reasons for it, are specifically set out and explained in the river basin management plan required under Article 13.

(c) Extensions shall be limited to a maximum of two further updates of the river basin management plan except in cases where the natural conditions are such that the objectives cannot be achieved within this period.

(d) A summary of the measures required under Article 11 which are envisaged as necessary to bring the bodies of water progressively to the required status by the extended deadline, the reasons for any significant delay in making these measures operational, and the expected timetable for their implementation are set out in the river basin management plan. A review of the implementation of these measures and a summary of any additional measures shall be included in updates of the river basin management plan.

5. Member States may aim to achieve less stringent environmental objectives than those required under paragraph

1 for specific bodies of water when they are so affected by human activity, as determined in accordance with Article 5(1), or their natural condition is such that the achievement of these objectives would be infeasible or disproportionately expensive, and all the following conditions are met:

(a) the environmental and socioeconomic needs served by such human activity cannot be achieved by other means, which are a significantly better environmental option not entailing disproportionate costs;

(b) Member States ensure,

- for surface water, the highest ecological and chemical status possible is achieved, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution,

- for groundwater, the least possible changes to good groundwater status, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution;

(c) no further deterioration occurs in the status of the affected body of water;

(d) the establishment of less stringent environmental objectives, and the reasons for it, are specifically mentioned in the river basin management plan required under Article 13 and those objectives are reviewed every six years.

6. Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or force majeure which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

(a) all practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water not affected by those circumstances;

(b) the conditions under which circumstances that are exceptional or that could not reasonably have been foreseen may be declared, including the adoption of the appropriate indicators, are stated in the river basin management plan;

(c) the measures to be taken under such exceptional circumstances are included in the programme of measures and will not compromise the recovery of the quality of the body of water once the circumstances are over;

(d) the effects of the circumstances that are exceptional or that could not reasonably have been foreseen are reviewed annually and, subject to the reasons set out in paragraph

4(a), all practicable measures are taken with the aim of restoring the body of water to its status prior to the effects of those circumstances as soon as reasonably practicable, and

(e) a summary of the effects of the circumstances and of such measures taken or to be taken in accordance with paragraphs (a) and (d) are included in the next update of the river basin management plan.

7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or

- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

[...]

Article 8

Monitoring of surface water status, groundwater status and protected areas

1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

- for surface waters such programmes shall cover:

(i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and

(ii) the ecological and chemical status and ecological potential;

- for groundwaters such programmes shall cover monitoring of the chemical and quantitative status,

- for protected areas the above programmes shall be supplemented by those specifications contained in Community legislation under which the individual protected areas have been established.

2. These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation concerned. Such monitoring shall be in accordance with the requirements of Annex V.

3. Technical specifications and standardised methods for analysis and monitoring of water status shall be laid down in accordance with the procedure laid down in Article 21.

Article 9

Recovery of costs for water services

1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.

Member States shall ensure by 2010

- that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,

- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle.

Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this Directive and on the contribution made by the various water uses to the recovery of the costs of water services.

3. Nothing in this Article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this Directive.

4. Member States shall not be in breach of this Directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. Member States shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.

[...]

Article 13

River basin management plans

1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.
2. In the case of an international river basin district falling entirely within the Community, Member States shall ensure coordination with the aim of producing a single international river basin management plan. Where such an international river basin management plan is not produced, Member States shall produce river basin management plans covering at least those parts of the international river basin district falling within their territory to achieve the objectives of this Directive.
3. In the case of an international river basin district extending beyond the boundaries of the Community, Member States shall endeavour to produce a single river basin management plan, and, where this is not possible, the plan shall at least cover the portion of the international river basin district lying within the territory of the Member State concerned.
4. The river basin management plan shall include the information detailed in Annex VII.
5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basin, sector, issue, or water type, to deal with particular aspects of water management. Implementation of these measures shall not exempt Member States from any of their obligations under the rest of this Directive.
6. River basin management plans shall be published at the latest nine years after the date of entry into force of this Directive.
7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.

[...]

ANNEX III

ECONOMIC ANALYSIS

The economic analysis shall contain enough information in sufficient detail (taking account of the costs associated with collection of the relevant data) in order to:

(a) make the relevant calculations necessary for taking into account under Article 9 the principle of recovery of the costs of water services, taking account of long term forecasts of supply and demand for water in the river basin district and, where necessary:

- estimates of the volume, prices and costs associated with water services, and
- estimates of relevant investment including forecasts of such investments;

(b) make judgements about the most cost-effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on estimates of the potential costs of such measures.

[...]

ANNEX VII

RIVER BASIN MANAGEMENT PLANS

A. River basin management plans shall cover the following elements:

1. a general description of the characteristics of the river basin district required under Article 5 and Annex II.

This shall include:

1.1. for surface waters:

- mapping of the location and boundaries of water bodies,
- mapping of the ecoregions and surface water body types within the river basin,
- identification of reference conditions for the surface water body types;

1.2. for groundwaters:

- mapping of the location and boundaries of groundwater bodies;

2. a summary of significant pressures and impact of human activity on the status of surface water and groundwater, including:

- estimation of point source pollution,
- estimation of diffuse source pollution, including a summary of land use,
- estimation of pressures on the quantitative status of water including abstractions,
- analysis of other impacts of human activity on the status of water;

3. identification and mapping of protected areas as required by Article 6 and Annex IV;

4. a map of the monitoring networks established for the purposes of Article 8 and Annex V, and a presentation in map form of the results of the monitoring programmes carried out under those provisions for the status of:

- 4.1. surface water (ecological and chemical);
- 4.2. groundwater (chemical and quantitative);
- 4.3. protected areas;

5. a list of the environmental objectives established under Article 4 for surface waters, groundwaters and protected areas, including in particular identification of instances where use has been made of Article 4(4), (5), (6) and (7), and the associated information required under that Article;

6. a summary of the economic analysis of water use as required by Article 5 and Annex III;

7. a summary of the programme or programmes of measures adopted under Article 11, including the ways in which the objectives established under Article 4 are thereby to be achieved;

7.1. a summary of the measures required to implement Community legislation for the protection of water;

7.2. a report on the practical steps and measures taken to apply the principle of recovery of the costs of water use in accordance with Article 9;

7.3. a summary of the measures taken to meet the requirements of Article 7;

7.4. a summary of the controls on abstraction and impoundment of water, including reference to the register and identifications of the cases where exemptions have been made under Article 11(3)(e);

7.5. a summary of the controls adopted for point source discharges and other activities with an impact on the status of water in accordance with the provisions of Article 11(3)(g) and 11(3)(i);

7.6. an identification of the cases where direct discharges to groundwater have been authorised in accordance with the provisions of Article 11(3)(j); 7.7. a summary of the measures taken in accordance with Article 16 on priority substances;

7.8. a summary of the measures taken to prevent or reduce the impact of accidental pollution incidents;

- 7.9. a summary of the measures taken under Article 11(5) for bodies of water which are unlikely to achieve the objectives set out under Article 4;
- 7.10. details of the supplementary measures identified as necessary in order to meet the environmental objectives established;
- 7.11. details of the measures taken to avoid increase in pollution of marine waters in accordance with Article 11(6);
8. a register of any more detailed programmes and management plans for the river basin district dealing with particular sub-basins, sectors, issues or water types, together with a summary of their contents;
9. a summary of the public information and consultation measures taken, their results and the changes to the plan made as a consequence;
10. a list of competent authorities in accordance with Annex I;
11. the contact points and procedures for obtaining the background documentation and information referred to in Article 14(1), and in particular details of the control measures adopted in accordance with Article 11(3)(g) and 11(3)(i) and of the actual monitoring data gathered in accordance with Article 8 and Annex V.
- B. The first update of the river basin management plan and all subsequent updates shall also include:
1. a summary of any changes or updates since the publication of the previous version of the river basin management plan, including a summary of the reviews to be carried out under Article 4(4), (5), (6) and (7);
 2. an assessment of the progress made towards the achievement of the environmental objectives, including presentation of the monitoring results for the period of the previous plan in map form, and an explanation for any environmental objectives which have not been reached;
 3. a summary of, and an explanation for, any measures foreseen in the earlier version of the river basin management plan which have not been undertaken;
 4. a summary of any additional interim measures adopted under Article 11(5) since the publication of the previous version of the river basin management plan.

3. Further reading

a) DG Environment resources

- General 'water' webpage:

http://ec.europa.eu/environment/water/index_en.htm

b) European Court of Auditor's:

- Special Report No 3/2009 – The effectiveness of structural measures on waste water treatment for the 1997-99 and 2000-06 programme periods
- Special Report No 9/2010 – Is EU structural measures spending on the supply of water for domestic consumption used to best effect?

<http://eca.europa.eu/portal/pls/portal/docs/1/6356724.PDF>

A. 6-2 Waste ⁴²

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
6. Protecting the environment and promoting the sustainable use of resources [referred to in Article 9(6)]	ERDF + CF: Addressing the significant needs for investment in the waste sector to meet the requirements of the environmental <i>acquis</i>	6.2 <i>Waste sector</i> : Promoting economically and environmentally sustainable investments in the waste sector particularly by the development of waste management plans consistent with Directive 2008/98/EC on waste, and with the waste hierarchy.	<ul style="list-style-type: none"> – A report has been submitted to the Commission on progress towards targets of Article 11 of Directive 2008/98/EC and intended actions to meet the targets. – The existence of one or more waste management plans as required by Article 28 of Directive 2008/98/EC. – A Member State has established, consistent with Articles 1 and 4 of Directive 2008/98/EC, waste prevention programmes, as required by Article 29 of the Directive. – Necessary measures to achieve the target on re-use and recycling by 2020 consistent with Article 11.2 of Directive 2008/98/EC have been adopted.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding within ERDF/CF for addressing the significant needs for investment in the waste sector to meet the requirements of the Union's environmental *acquis* (Art. 5 (6) (a) of the ERDF Regulation and Art.3 (c) (i) of the CF Regulation).

2. Definitions (source: Directive 2008/98/EC)

Waste hierarchy: The waste hierarchy lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy (prevention, preparing for re-use, recycling, other recovery, e.g. energy recovery and disposal). This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Waste management means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker.

Waste management plan: Member States shall ensure that their competent authorities establish one or more waste management plans. Those plans shall, alone or in combination,

⁴² This table is based on the Council Compromise text.

cover the entire geographical territory of the Member State concerned. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of the Waste Framework Directive. The Commission has recently published guidance on how to prepare Waste Management Plans:

http://ec.europa.eu/environment/waste/plans/pdf/2012_guidance_note.pdf

Prevention means measure taken before a substance, material or product has become waste, that reduce:

- the quantity of waste, including through the re-use of products or the extension of the life span of products;
- the adverse impacts of the generated waste on the environment and human health;
- or the content of harmful substances in materials and products.

Waste prevention programme: Member States shall establish waste prevention programmes not later than 12 December 2013. Such programmes shall be integrated either into the waste management plans provided for in Article 28 or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified. The Commission has recently published guidance on how to prepare Waste Prevention Programmes:

<http://ec.europa.eu/environment/waste/prevention/pdf/Waste%20prevention%20guidelines.pdf>

Re-use: means any operation by which products or components that are not waste are used again for the same purpose for which they were conceived.

Preparation for re-use means checking, cleaning, or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing.

Recycling: means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.

3. Source of information for assessment

- Waste management plans (2nd criterion)

A first broad screening of the plans submitted by the Member States has been achieved by the Commission in June 2012.

http://ec.europa.eu/environment/waste/framework/support_implementation.htm

A targeted and more in detail screening of the mandatory elements required in those plans is foreseen to start before September 2013.

- Waste prevention programmes (3rd criterion)

In 2013, the assessment by the Commission of this criterion can only check progress in MS towards drawing the Programmes (adoption timelines, relevant consultation process, etc.).

- Assessment of the progress done to achieve the targets for the preparation of re-use and recycling (4th criterion)

As of 2004 Eurostat's statistics on municipal waste generation and management are available for each Member State, this gives a precise overview on the necessary efforts still to be accomplished to meet the waste-related targets established by EU legislation and to apply the waste hierarchy.

<http://epp.eurostat.ec.europa.eu/portal/page/portal/waste/introduction/>

- Use of Economic Instruments and Waste Management Performances

The Commission has initiated a study on economic instruments and their impact on waste management performances. Data and information on their use in each MS is available and can be used to check whether these measures are taken at a sufficient level.

http://ec.europa.eu/environment/waste/pdf/final_report_10042012.pdf

- Roadmaps on how to implement the waste legislation

In 2012, the Commission initiated a compliance-assistance project in 10 Member States meeting difficulties in implementing the waste legislation. Seminars were organised in these Member States during which recommendations from the Commission (Roadmaps) were discussed. The Roadmaps will be finalised and made public by mid-March 2013 on the following web site:

http://ec.europa.eu/environment/waste/framework/support_implementation.htm

- Country specific recommendations

In addition, several recommendations related to waste management were made to Member States in the context of the Country Specific Recommendations established by the Commission in the context of the European Semester.

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

4. Rationale for the *ex ante* conditionality

Without an appropriate mechanism to establish a hierarchy of waste which prioritizes prevention, re-use and recycling at national and regional level, investment in waste management cannot be sustainable.

5. Fulfilment and non-fulfilment of criteria (Assessment grid)

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A report has been submitted to the Commission progress towards targets of Article 11 of Directive 2008/98/EC and intended actions to meet the targets.</i></p> <ul style="list-style-type: none"> ▪ By September 2013, Member States are requested to provide implementation reports for the years 2011-2012 (in an electronic form). <ul style="list-style-type: none"> ○ The report is available ○ A link towards it can be provided to the Commission. ▪ The report contains, at least, the following mandatory elements: <ul style="list-style-type: none"> ○ the relevant statistics on progress achieved towards the targets in Article 11 of the Waste Framework Directive ○ If targets are not met, the reasons for failure and the intended actions to meet the targets by 2020. 		
<p><i>The existence of one or more waste management plans as required by Article 28 of Directive 2008/98/EC</i></p> <ul style="list-style-type: none"> ▪ Waste management plans have been adopted for all territories where OPs include waste investment priorities ▪ Each plan is designed in compliance with the waste hierarchy ▪ Each plan include, at least, the following mandatory elements: <ul style="list-style-type: none"> ○ The type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future; ○ Existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation; ○ An assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto; 		

<ul style="list-style-type: none"> ○ Sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary; ○ General waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems. 		
<p><i>A Member State has established, consistent with Articles 1 and 4 of Directive 2008/98/EC, waste prevention programmes, as required by Article 29 of the Directive</i></p> <ul style="list-style-type: none"> ▪ The relevant waste prevention programmes have been adopted; they meet the following requirements : <ul style="list-style-type: none"> ○ they are compliant with the waste hierarchy; ○ they set out waste prevention objectives and measures (based on the examples set out in Annex IV to the Waste Framework Directive) to break the link between economic growth and the environmental impacts associated with the generation of waste. ○ they contain qualitative and quantitative indicators necessary to measure progress in this field. 		
<p><i>Necessary measures to achieve the target on re-use and recycling by 2020 consistent with Article 11.2 of Directive 2008/98/EC have been adopted.</i></p> <ul style="list-style-type: none"> ▪ As part of the Waste Management Plans, these measures include the presence and use at an appropriate level of key economic instruments such as : <ul style="list-style-type: none"> ○ Appropriate landfill taxes (and/or bans of recyclable wastes); ○ Incineration tariff policy able to favour recycling/reused; ○ Pay as you throw (PAYT) schemes (or equivalent systems) at local level covering a progressive increasing part of the population; ○ Producer Responsibility schemes (ensuring the funding of separate collection and recycling of relevant waste streams) or equivalent systems (such as deposit systems); ○ Strategy, policies or rules to incentivize competent authorities for municipal waste management (municipalities/Regions) to move towards the waste hierarchy and adopt ad-hoc instruments (such as PAYT). 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

a) Main references

- Directive 2008/98/EC on waste and repealing certain Directives:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0098:EN:NOT>

- Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:332:0001:0036:EN:PDF>

b) Other references

- Directive of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (91/692/EEC)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0692:EN:HTML>

- Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1994:365:0010:0023:EN:PDF>

- Directive 1999/31/EC of 26 April 1999 of the landfill of waste

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:182:0001:0019:EN:PDF>

- Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:190:0001:0001:EN:PDF>

2. Extract of relevant documents

- Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.

[...]

Article 4

Waste hierarchy

1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome.

This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

Member States shall ensure that the development of waste legislation and policy is a fully transparent process, observing existing national rules about the consultation and involvement of citizens and stakeholders.

Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.

[...]

CHAPTER II

GENERAL REQUIREMENTS

Article 8

Extended producer responsibility

1. In order to strengthen the re-use and the prevention, recycling and other recovery of waste, Member States may take legislative or non-legislative measures to ensure that any natural or legal person who professionally develops, manufactures, processes, treats, sells or imports products (producer of the product) has extended producer responsibility.

Such measures may include an acceptance of returned products and of the waste that remains after those products have been used, as well as the subsequent management of the waste and financial responsibility for such activities. These measures may include the obligation to provide publicly available information as to the extent to which the product is re-usable and recyclable.

2. Member States may take appropriate measures to encourage the design of products in order to reduce their environmental impacts and the generation of waste in the course of the production and subsequent use of products, and in order to ensure that the recovery and disposal of products that have become waste take place in accordance with Articles 4 and 13.

Such measures may encourage, inter alia, the development, production and marketing of products that are suitable for multiple use, that are technically durable and that are, after having become waste, suitable for proper and safe recovery and environmentally compatible disposal.

3. When applying extended producer responsibility, Member States shall take into account the technical feasibility and economic viability and the overall environmental, human health and social impacts, respecting the need to ensure the proper functioning of the internal market.

4. The extended producer responsibility shall be applied without prejudice to the responsibility for waste management as provided for in Article 15(1) and without prejudice to existing waste stream specific and product specific legislation.

[...]

Article 10

Recovery

1. Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 4 and 13.

2. Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.

Article 11

Re-use and recycling

1. Member States shall take measures, as appropriate, to promote the re-use of products and preparing for re-use activities, notably by encouraging the establishment and support of re-use and repair networks, the use of economic instruments, procurement criteria, quantitative objectives or other measures.

Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors. Subject to Article 10(2), by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass.

2. In order to comply with the objectives of this Directive, and move towards a European recycling society with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:

(a) by 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50 % by weight;

(b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70 % by weight.

3. The Commission shall establish detailed rules on the application and calculation methods for verifying compliance with the targets set out in paragraph 2 of this Article, considering Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics⁴³.

These can include transition periods for Member States which, in 2008, recycled less than 5 % of either categories of waste referred to in paragraph 2. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2) of this Directive.

4. By 31 December 2014 at the latest, the Commission shall examine the measures and the targets referred to in paragraph 2 with a view to, if necessary, reinforcing the targets and considering the setting of targets for other waste streams. The report of the Commission, accompanied by a proposal if appropriate, shall be sent to the European Parliament and the Council.

In its report, the Commission shall take into account the relevant environmental, economic and social impacts of setting the targets.

5. Every three years, in accordance with Article 37, Member States shall report to the Commission on their record with regard to meeting the targets. If targets are not met, this report shall include the reasons for failure and the actions the Member State intends to take to meet those targets.

[...]

Article 13

Protection of human health and the environment

Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

- (a) without risk to water, air, soil, plants or animals;
- (b) without causing a nuisance through noise or odours; and
- (c) without adversely affecting the countryside or places of special interest.

[...]

CHAPTER III

WASTE MANAGEMENT

Article 15

Responsibility for waste management

1. Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 4 and 13.

[...]

⁴³ OJ L 332, 9.12.2002, p. 1.

Article 16

Principles of self-sufficiency and proximity

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

By way of derogation from Regulation (EC) No 1013/2006, Member States may, in order to protect their network, limit incoming shipments of waste destined to incinerators that are classified as recovery, where it has been established that such shipments would result in national waste having to be disposed of or waste having to be treated in a way that is not consistent with their waste management plans. Member States shall notify the Commission of any such decision. Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006.

2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.

[...]

CHAPTER V

PLANS AND PROGRAMMES

Article 28

Waste management plans

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans.

Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.

3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

(a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;

(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;

(c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;

(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;

(e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

4. The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

(a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;

(b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

(c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;

(d) historical contaminated waste disposal sites and measures for their rehabilitation.

5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

Article 29

Waste prevention programmes

1. Member States shall establish, in accordance with Articles 1 and 4, waste prevention programmes not later than 12 December 2013.

Such programmes shall be integrated either into the waste management plans provided for in Article 28 or into other environmental policy programmes, as appropriate, or shall function as separate programmes. If any such programme is integrated into the waste management plan or into other programmes, the waste prevention measures shall be clearly identified.

2. The programmes provided for in paragraph 1 shall set out the waste prevention objectives. Member States shall describe the existing prevention measures and evaluate the usefulness of the examples of measures indicated in Annex IV or other appropriate measures.

The aim of such objectives and measures shall be to break the link between economic growth and the environmental impacts associated with the generation of waste.

3. Member States shall determine appropriate specific qualitative or quantitative benchmarks for waste prevention measures adopted in order to monitor and assess the progress of the measures and may determine specific qualitative or quantitative targets and indicators, other than those referred to in paragraph 4, for the same purpose.

4. Indicators for waste prevention measures may be adopted in accordance with the regulatory procedure referred to in Article 39(3).

5. The Commission shall create a system for sharing information on best practice regarding waste prevention and shall develop guidelines in order to assist the Member States in the preparation of the Programmes.

[...]

CHAPTER VII

FINAL PROVISIONS

Article 37

Reporting and reviewing

1. Every three years, Member States shall inform the Commission of the implementation of this Directive by submitting a sectoral report in an electronic form. This report shall also contain information on the management of waste oil and on the progress achieved in the implementation of the waste prevention programmes and, as appropriate, information on measures as foreseen by Article 8 on extended producer responsibility.

The report shall be drawn up on the basis of a questionnaire or outline established by the Commission in accordance with the procedure referred to in Article 6 of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment⁴⁴. The report shall be submitted to the Commission within nine months of the end of the three year period covered by it.

2. The Commission shall send the questionnaire or outline to the Member States six months before the start of the period covered by the sectoral report.

3. The Commission shall publish a report on the implementation of this Directive within nine months of receiving the sectoral reports from the Member States in accordance with paragraph 1.

4. In the first report that intervenes by 12 December 2014, the Commission shall review the implementation of this Directive, including the energy efficiency provisions, and will present a proposal for revision if appropriate. The report shall also assess the existing Member State waste prevention programmes, objectives and indicators and shall review the opportunity of Community level programmes, including producer responsibility schemes for specific waste streams, targets, indicators and measures related to recycling, as well as material and energy recovery operations that may contribute to fulfilling the objectives set out in Articles 1 and 4 more effectively.

[...]

Article 39

Committee procedure

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Article 5a (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

ANNEX IV

EXAMPLES OF WASTE PREVENTION MEASURES REFERRED TO IN ARTICLE 29

Measures that can affect the framework conditions related to the generation of waste

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.

2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.

⁴⁴ OJ L 377, 31.12.1991, p. 48.

3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).

5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.

6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under this Directive and Directive 96/61/EC.

7. The inclusion of measures to prevent waste production at installations not falling under Directive 96/61/EC. Where appropriate, such measures could include waste prevention assessments or plans.

8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.

9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.

10. The promotion of credible environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.

12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.

13. The promotion of credible eco-labels.

14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of

Integrated Product Policies or with retailers on the availability of waste prevention information and products with a lower environmental impact.

15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004.

16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.

- Council Directive of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (91/692/EEC)

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representatives of the Commission.

The representative of the Commission shall submit to the committee a draft of measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission may defer applications of the measures which it has decided for a period of not more than one month from the date of such communication,

- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first indent.

- Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

Article 1

Objectives

1. This Directive aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

[...]

Article 4

Prevention

1. Member States shall ensure that, in addition to the measures to prevent the formation of packaging waste taken in accordance with Article 9, other preventive measures are implemented. Such other measures may consist of national programmes or similar actions adopted, if appropriate in consultation with economic operators, and designed to collect and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1 (1).

2. The Commission shall help to promote prevention by encouraging the development of suitable European standards, in accordance with Article 10.

Article 5

Member States may encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty.

[...]

Article 9

Essential requirements

1. Member States shall ensure that three years from the date of the entry into force of this Directive, packaging may be placed on the market only if it complies with all essential requirements defined by this Directive including Annex II.

2. Member States shall, from the date set out in Article 22 (1), presume compliance with all essential requirements set out in this Directive including Annex II in the case of packaging which complies:

(a) with the relevant harmonized standards, the reference numbers of which have been published in the Official Journal of the European Communities. Member States shall publish the reference numbers of national standards transposing these harmonized standards;

(b) with the relevant national standards referred to in paragraph 3 in so far as, in the areas covered by such standards, no harmonized standards exist.

3. Member States shall communicate to the Commission the text of their national standards, as referred to in paragraph 2 (b), which they deem to comply with the requirements referred to in this Article. The Commission shall forward such texts forthwith to the other Member States.

Member States shall publish the references of these standards. The Commission shall ensure that they are published in the Official Journal of the European Communities.

4. Where a Member State or the Commission considers that the standards referred to in paragraph 2 do not entirely meet the essential requirements referred to in paragraph 1, the Commission or the Member State concerned shall bring the matter before the Committee set up by Directive 83/189/EEC giving the reasons therefor. This Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform Member States whether or not it is necessary to withdraw those standards from the publications referred to in paragraphs 2 and 3.

Article 10

Standardization

The Commission shall promote, as appropriate, the preparation of European standards relating to the essential requirements referred to in Annex II.

The Commission shall promote, in particular, the preparation of European standards relating to:

- criteria and methodologies for life-cycle analysis of packaging,
- the methods for measuring and verifying the presence of heavy metals and other dangerous substances in the packaging and their release into the environment from packaging and packaging waste,
- criteria for a minimum content of recycled material in packaging for appropriate types of packaging,
- criteria for recycling methods,
- criteria for composting methods and produced compost,
- criteria for the marking of packaging.

[...]

Article 14

Management Plans

In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 17 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5.

[...]

Article 22

Implementation in national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.

ANNEX II

ESSENTIAL REQUIREMENTS ON THE COMPOSITION AND THE REUSABLE AND RECOVERABLE, INCLUDING RECYCLABLE, NATURE OF PACKAGING

1. Requirements specific to the manufacturing and composition of packaging - Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer.

- Packaging shall be designed, produced and commercialized in such a way as to permit its reuse or recovery, including recycling, and to minimize its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.

- Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimized with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.

2. Requirements specific to the reusable nature of packaging The following requirements must be simultaneously satisfied:

- the physical properties and characteristics of the packaging shall enable a number of trips or rotations in normally predictable conditions of use,

- possibility of processing the used packaging in order to meet health and safety requirements for the workforce,

- fulfil the requirements specific to recoverable packaging when the packaging is no longer reused and thus becomes waste.

3. Requirements specific to the recoverable nature of packaging (a) Packaging recoverable in the form of material recycling Packaging must be manufactured in such a way as to enable the recycling of a certain percentage by weight of the materials used into the manufacture of marketable products, in compliance with current standards in the Community. The establishment of this percentage may vary, depending on the type of material of which the packaging is composed.

(b) Packaging recoverable in the form of energy recovery Packaging waste processed for the purpose of energy recovery shall have a minimum inferior calorific value to allow optimization of energy recovery.

(c) Packaging recoverable in the form of composting Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it should not hinder the separate collection and the composting process or activity into which it is introduced.

(d) Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water.

- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

Article 5

Waste and treatment not acceptable in landfills

1. Member States shall set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills, not later than two years after the date laid down in Article 18(1) and notify the Commission of this strategy. This strategy should include measures to achieve the targets set out in paragraph 2 by means of in particular, recycling, composting, biogas production or materials/energy recovery. Within 30 months of the date laid down in Article 18(1) the Commission shall provide the European Parliament and the Council with a report drawing together the national strategies.

2. This strategy shall ensure that:

(a) not later than five years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 75 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available

(b) not later than eight years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 50 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available;

(c) not later than 15 years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 35 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

Two years before the date referred to in paragraph (c) the Council shall reexamine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraphs (a) and (b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.

Member States which in 1995 or the latest year before 1995 for which standardised EUROSTAT data is available put more than 80 % of their collected municipal waste to landfill may postpone the attainment of the targets set out in paragraphs (a), (b), or (c) by a period not exceeding four years. Member States intending to make use of this provision shall inform in advance the Commission of their decision. The Commission shall inform other Member States and the European Parliament of these decisions.

The implementation of the provisions set out in the preceding subparagraph may in no circumstances lead to the attainment of the target set out in paragraph (c) at a date later than four years after the date set out in paragraph (c).

3. Member States shall take measures in order that the following wastes are not accepted in a landfill:

(a) liquid waste;

(b) waste which, in the conditions of landfill, is explosive, corrosive, oxidising, highly flammable or flammable, as defined in Annex III to Directive 91/689/EEC;

(c) hospital and other clinical wastes arising from medical or veterinary establishments, which are infectious as defined (property H9 in Annex III) by Directive 91/689/EEC and waste falling within category 14 (Annex I.A) of that Directive.

(d) whole used tyres from two years from the date laid down in Article 18(1), excluding tyres used as engineering material, and shredded used tyres five years from the date laid down in Article 18(1) (excluding in both instances bicycle tyres and tyres with an outside diameter above 1 400 mm);

(e) any other type of waste which does not fulfil the acceptance criteria determined in accordance with Annex II.

4. The dilution of mixture of waste solely in order to meet the waste acceptance criteria is prohibited.

3. Further reading

a) DG Environment resources

- General 'waste' webpage:
<http://ec.europa.eu/environment/waste/index.htm>
- Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste:
http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf
- Scoreboard by MS on waste management performance:
http://europa.eu/rapid/press-release_IP-12-888_en.htm

b) European Court of Auditor's:

- Special Report Special Report No 20/2012 – Is structural measures funding for municipal waste management infrastructure projects effective in helping member states achieve EU waste policy objectives?
<http://eca.europa.eu/portal/pls/portal/docs/1/20156748.PDF>

A.7-1 Road ⁴⁵

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7))	<p>ERDF + CF:</p> <ul style="list-style-type: none"> – supporting a multimodal Single European Transport Area by investing in the Trans-European Transport Network (TEN-T) network <p>ERDF:</p> <ul style="list-style-type: none"> – enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure 	<p>7.1. Road: The existence of a comprehensive plan(s) or framework(s) for transport investment in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks.</p>	<ul style="list-style-type: none"> – The existence of a comprehensive transport plan(s) or framework(s) for transport investment which fulfills legal requirements for strategic environmental assessment and sets out: <ul style="list-style-type: none"> – the contribution to the single European Transport Area consistent with Article 10 of Regulation No. [TEN-T], including priorities for investments in: <ul style="list-style-type: none"> – the core TEN-T network and the comprehensive network where investment from the ERDF and CF is envisaged; and – secondary connectivity. – a realistic and mature pipeline for projects envisaged for support from the ERDF and CF. – Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding:

- within ERDF/CF to support for multimodal Single European Transport Area by investing in the TEN-T network (Art. 5 (7) (a) of the ERDF Regulation and Art.3 (d) (i) of the CF Regulation), and/or
- within ERDF for enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure (Art. 5 (7) (b) of the ERDF Regulation).

2. Definitions⁴⁶

Transport mode means railway, inland waterways, road, maritime or/and air transport.

⁴⁵ The table below is based on the Council compromise text.

⁴⁶ Most of the definitions are based on the Commission's proposal for the TEN-T Regulation – adjustments might therefore intervene in the coming weeks to align them to the outcome of the trilogues on the TEN-T Regulation.

Multimodal transport means the carriage of freight and /or passengers using two or more modes of transports

The comprehensive network constitutes the basic layer of the TENT-T. It consists of all existing and planned infrastructure meeting the requirements of the Guidelines. The comprehensive network is to be in place by 31 December 2050 at the latest.

The core network consists of those parts of the comprehensive TEN-T network which are of the highest strategic importance for the achievement of the objectives concerning the development of the trans-European network. It constitutes the backbone of the multi-modal mobility network. It concentrates on those components of TEN-T with the highest European added value: cross-border missing links, key bottlenecks and multi-modal nodes. It is the outcome of a two-step methodology identifying first main nodes within the EU and then connecting these nodes by multimodal links (road, rail, inland waterway) according to availability or feasibility, taking into account effectiveness and efficiency and preferably using existing infrastructure. The core network is to be in place by 31 December 2030 at the latest.

The core nodes consist of 82 urban main nodes (comprising all Member States' capitals, all "MEGA" cities according to ESPON and all other large urban areas or conurbations, including their entire relevant multimodal infrastructure as far as part of the comprehensive network), ports which exceed a certain volume threshold (at least 1 % of the total transshipment volume of all EU seaports) or provide the only access to a coastline of a NUTS 1 inland region and the 46 most relevant border crossing points. You will find in the annex below the list of nodes concerning each Member State.

The Intelligent Transport Systems (ITS) mean systems using information, communication, navigation and positioning/localization technologies in order to manage mobility and traffic on the trans-European transport network and to provide value added services to citizens and operators, including for safe, secure, environmentally sound and capacity efficient use of the network. They may also include on-board devices, provided they form an indivisible system with corresponding infrastructure components.

The concept of "realistic and mature project pipeline" has to be understood in the context of the whole project cycle starting from planning until the implementation. It means a list of projects for which:

- A feasibility study (including options analysis and preliminary design) has been concluded;
- There is a positive socio-economic Cost Benefit Analysis (including detailed estimated costs) demonstrating financial feasibility and the need for public financial contributions;
- EIA (environmental impact assessment) and other assessments (e.g. under Habitats and Water Framework Directives) are ideally finished or at least sufficiently advanced (i.e. consultations with the public and other authorities finished) and a development consent is expected without outstanding environmental issues
- State aid issues are cleared;

- There is a detailed implementation timetable, detailing procurement procedures (call for tenders can be expected to be completed in accordance to the timetable) and permission procedures (these should be ready to start: for instance land expropriations are well advanced and can be completed in sufficient time for the start of the works, as programmed).

3. Source of information for assessment

- Detailed maps of the comprehensive and the core network, including requirements for technical and traffic management standards, as defined in the TEN-T Guidelines:

http://ec.europa.eu/transport/themes/infrastructure/revision-t_en.htm

4. Rationale for the *ex ante* conditionality

The network effects of major transport investments in TENs networks is often missed due to missing links, often in border areas.

Investments in secondary transport infrastructure are often fragmented and fail to connect local business to EU markets, thereby undermining their integration in single market.

Lack of sufficient capacity of intermediate bodies and beneficiaries can substantially undermine the investment in road transport.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>The existence of a comprehensive transport plan(s) or framework(s) for transport investment which:</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the framework and indicates where it or its different elements are published (in a form of a link) 		
<p>– <i>fulfills legal requirements for strategic environmental assessment :</i></p> <ul style="list-style-type: none"> ▪ An environmental report has been carried out identify, describe and evaluate the likely significant effects on the environment of the implementation of the plan or framework for transport investments and reasonable alternatives taking into account the objectives and the geographical scope of the plan or framework for transport investments. ▪ The draft plan or framework for transport investments and the environmental report has been made available to the public and the authorities designated by the Member States who are likely to be concerned by the environmental effects of the implementing plans. ▪ Where the implementation of the plan or framework for transport investments is likely to have significant effects on the environment in another Member State (transboundary effects), a copy of the draft plan or framework and the relevant environmental report has been forwarded to the other Member States. ▪ The environmental report and the opinions expressed in the relevant consultations have been taken into account before the adoption of the plan or framework for transport investments 		
<p>– <i>sets out the contribution to the single European Transport Area consistent with Article 10 of Regulation No. [TEN-T], including priorities for investments in the core TEN-T network and the comprehensive network where investment from the ERDF and CF is envisaged; and secondary connectivity.</i></p> <ul style="list-style-type: none"> ▪ The investment priorities included in the plan or framework for transport investments connects the identified main nodes (see the list in annex) and provides for connections with neighbouring 		

countries' transport infrastructure networks.

- The plan or framework for transport investments includes measures that are necessary for:
 - ensuring enhanced accessibility for all regions of the Union;
 - ensuring optimal integration of the transport modes ; the plan includes namely detailed reference to integration of the road infrastructure with the other transport network;
 - bridging missing links and removing bottlenecks, inter alia in cross-border sections;
 - promoting the efficient use of the infrastructure and, where necessary, increase the capacity;
 - removing administrative and technical barriers, in particular to the interoperability of the network and to competition;
 - improving or maintaining the quality of infrastructure in terms of safety, security, efficiency, climate and where appropriate disaster resilience, environmental performances, social conditions, accessibility for all users, quality of services and continuity of traffic flows;
 - promoting innovative technological development;
 - implementing and deploying TA;
 - ensuring fuel security by promoting the use of alternative and in particular low or zero carbon energy sources and propulsion systems; the plan includes an assessment of the overall impact on energy sector induced by the transport sector;
 - mitigating exposure of urban areas to negative effects of transiting rail and road transport.

<ul style="list-style-type: none"> – sets out a realistic and mature pipeline for projects envisaged for support from the ERDF and CF ▪ The plan or framework for transport investments includes a table containing : <ul style="list-style-type: none"> ○ a list of prioritised projects (studies, upgrading or works) that the Member State envisages launching over the period and asking for support from the ERDF and CF. ○ the name of the authorities and stakeholders involved in the lead of these projects, the foreseen expenditures and a financing plan, ○ a realistic timetable for delivery (including design phase, development consent, procurement and permission procedures, and potential state aide notification) and for implementation (per phase for bigger projects). 		
<p><i>Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.</i></p> <ul style="list-style-type: none"> ▪ The Member State has provided an adequate description of the measures already in place to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline: <ul style="list-style-type: none"> ○ These measures are based on the analysis of both the bottlenecks and of the weaknesses of intermediary bodies and beneficiaries to deliver timely the project pipeline (e.g. tendering difficulties, including tenders without competitors and irregularities; irregularities, shortcomings, delays in implementing environment requirements; lack of clear prioritisation or moving priorities; lack of mature project pipeline under development; financial unbalance along the project cycle, lack of funding or funding provisions for maintenance and operations; long time to market of projects; excessive red tape administrative burden, paperwork; failure in managing complex systems (such as ETCS-ERTMS); ○ They include training and appropriate internal procedures to monitor and identify potential delays and to ensure a smooth and effective procurement; ○ A early warning system is in place to identify and solve any difficulties rising from intermediary bodies and beneficiairies when delivering the project pipeline; ○ Adequate assistance schemes are in place to help beneficiaries during procedure and implementation to be able to replace projects quickly when implementation is blocked. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- **TEN-T Regulation: Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))**⁴⁷

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0650:REV1:EN:HTML>

Annex I: Maps of the comprehensive and the core network – Vol. 2/33: Inland waterways and ports, Railways (freight), ports and rail-road terminals

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part02.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part02.pdf)

Annex I: Maps of the comprehensive and the core network – Vol. 3/33: Railways (passengers) and airports, roads, ports, rail-road terminals and airports

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part03.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part03.pdf)

Annex II: List of nodes of the core network

http://ec.europa.eu/transport/themes/infrastructure/doc/final_annexii.pdf

- **Strategic Environmental Assessment (SEA) Directive:**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

An environmental assessment shall be carried out for all plans and programmes which are prepared for transport and which set the framework for future development consent of projects⁴⁸.

⁴⁷ This reference will be replaced in the coming weeks to reference reflecting the outcome of the trilogue on the TEN-T Regulation.

⁴⁸ Annex I of the Environmental Impact Assessment Directive 85/337/ECC provides the list of the concerned projects: 7. (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more; 7. (b) Construction of motorways and express roads; 7. (c) Construction of a new road of four or more lanes, or realignment and /or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10km or more in a continuous length; 8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes; 8 (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes. Annex II completes it with a list of infrastructure projects: 10 (c) Construction of railways or intermodal transshipment facilities and of intermodals terminals; 10. (d) Construction of airfields; 10 (e) Construction of roads, harbours and port installations, including fishing harbours; 10 (f) inland-waterway construction, canalisation and flood-relief works.

2. Extract of relevant documents

- Council compromise text on the Union guidelines for the development of the trans-European transport network

<p>CHAPTER II</p> <p>THE COMPREHENSIVE NETWORK</p> <p><i>Article 10</i></p> <p>General priorities</p> <p>When developing the comprehensive network, general priority shall be given to measures that are necessary for:</p> <p>(a) ensuring enhanced accessibility for all regions of the Union;</p> <p>(b) ensuring optimal integration of the transport modes;</p> <p>(c) bridging missing links and removing bottlenecks, inter alia in cross-border sections;</p> <p>(cc) promoting the efficient use of the infrastructure and, where necessary, increase the capacity;</p> <p>(d) removing administrative and technical barriers, in particular to the interoperability of the network and to competition;</p> <p>(e) improving or maintaining the quality of infrastructure in terms of safety, security, efficiency, climate and where appropriate disaster resilience, environmental performances, social conditions, accessibility for all users, quality of services and continuity of traffic flows;</p> <p>(f) promoting innovative technological development;</p> <p>(g) implementing and deploying TA;</p> <p>(h) ensuring fuel security by promoting the use of alternative and in particular low or zero carbon energy sources and propulsion systems;</p> <p>(i) mitigating exposure of urban areas to negative effects of transiting rail and road transport.</p>

- Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))⁴⁹

⁴⁹ This list of nodes will be replaced in the coming weeks by an updated version reflecting the outcome of the trilogues on the TEN-T Regulation.

ANNEX II

LIST OF NODES OF THE CORE NETWORK

1a. Urban nodes:

AUSTRIA

Wien

BELGIUM

Bruxelles/ Brussel

Antwerpen

BULGARIA

Sofia

CYPRUS

Lefkosia

CZECH REPUBLIC

Praha

Ostrava

DENMARK

København

Aarhus

ESTONIA

Tallinn

FINLAND

Helsinki

Turku

FRANCE

Paris

Bordeaux

Lille

Lyon

Marseille

Nice

Toulouse

GERMANY

Berlin

Bielefeld

Bremen

Düsseldorf

Frankfurt a. M.

Hamburg

Hannover

Köln

Leipzig

Mannheim

München

Nürnberg

Stuttgart

GREECE

Athina

Thessaloniki

THE NETHERLANDS

Amsterdam

HUNGARY

Rotterdam

Budapest

IRELAND

POLAND

Dublin

Warszawa

Cork

Gdańsk

ITALY

Katowice

Roma

Kraków

Bologna

Łódź

Genova

Poznań

Milano

Szczecin

Napoli

Wrocław

Torino

PORTUGAL

Venezia

Lisboa

Palermo

Porto

LATVIA

ROMANIA

Rīga

București

LITHUANIA

Timisoara

Vilnius

SLOVAKIA

LUXEMBOURG

Bratislava

Luxembourg

SLOVENIA

Ljubljana

MALTA

SPAIN

Valletta

Madrid

Barcelona

Bilbao

Palma de Mallorca

Sevilla

Valencia

SWEDEN

Stockholm

Göteborg

Malmö

UNITED KINGDOM

London

Birmingham

Bristol

Edinburgh

Glasgow

Leeds

Manchester

Portsmouth

Sheffield

1b. Airports:

AUSTRIA

Wien/Schwechat

BELGIUM

Bruxelles/National Brussel/Nationaal

CZECH REPUBLIC

Praha/Ruzyně

DENMARK

Copenhagen Kastrup

FINLAND

Helsinki-Vantaa

FRANCE

Lyon – St-Exupéry

Nice – Côte d'Azur

Paris – Charles-de-Gaulle

Paris– Orly

GERMANY

Berlin Brandenburg International

Düsseldorf

Frankfurt/Main

Hamburg

Köln/Bonn

München

Stuttgart

Warszawa – Okęcie

GREECE

Athens

HUNGARY

Budapest-Ferihegy

IRELAND

Dublin

ITALY

Milano-Linate

Milano-Malpensa

Roma-Fiumicino

THE NETHERLANDS

Amsterdam/Schiphol

POLAND

PORTUGAL

Lisboa

SPAIN

Barcelona

Madrid/Barajas

Palma de Mallorca

SWEDEN

Stockholm/Arlanda

UNITED KINGDOM

Birmingham

Edinburgh

Gatwick

Glasgow

Heathrow

Luton

Manchester

Stansted

2. Maritime ports:

BELGIUM

Antwerpen

Gent

Oostende, Zeebrugge

BULGARIA

Burgas

CYPRUS

Lemesos

DENMARK

Århus

Københavns Havn

ESTONIA

Tallinn

FINLAND

Helsinki

Kotka, Hamina

Turku

FRANCE

Bordeaux

Calais, Dunkerque

Le Havre

Marseille

Nantes Saint-Nazaire

Rouen

GERMANY

Bremerhaven, Bremen

Hamburg

Lübeck

Rostock

Wilhelmshaven

GREECE

Igoumenitsa

Patras

Pireus

Thessaloniki

IRELAND

Cork

Dublin

Limerick

ITALY

Ancona

Bari

Genova

Gioia Tauro

La Spezia

Livorno

Napoli

Palermo

Ravenna

Taranto

Trieste

Venezia

LATVIA

Rīga

Ventspils

LITHUANIA

Klaipėda

MALTA

Valletta, Marsaxlokk

THE NETHERLANDS

Amsterdam

Rotterdam

Terneuzen, Vlissingen

POLAND

Gdąnsk, Gdynia

Świnoujście, Szczecin

PORTUGAL

Leixões (Porto)

Lisboa

Sines

ROMANIA

Constanța

SLOVENIA

Koper

SPAIN

Algeciras

Barcelona

Bilbao

Cartagena

Gijón

A Coruña

Las Palmas

Palma de Mallorca

Sevilla

Tarragona

Valencia

SWEDEN

Göteborg

Luleå

Malmö

Stockholm

Trelleborg

UNITED KINGDOM

Belfast

Bristol

Cardiff, Newport

Dover

Felixstowe

Forth (Edinburgh)

Glasgow

Grimsby, Immingham

Liverpool

London

Southampton, Portsmouth

Tees and Hartlepool

3. Border crossing points to neighbouring countries:

EU Member State	Neighbouring Country	Border Crossing (Road)	Border Crossing (Rail)
BULGARIA	SERBIA	Kalotina	Kalotina
	FYROM	Gueshevo	Gueshevo
	TURKEY	Svilengrad	Svilengrad
ESTONIA	RUSSIA	Luhamaa	Koidula
FINLAND	RUSSIA	Vaalimaa	Vainikkala
GREECE	ALBANIA	Kakavia	Krystallopigi
	FYROM	Evzoni	Idomeni
	TURKEY	Kipi	Pythion
HUNGARY	UKRAINE	Beregsurany	Zahony
	CROATIA	Letenye	Gyekenyes
	SERBIA	Szeged	Kelebia
LATVIA	RUSSIA	Terehova	Zilupe
	BELARUS	Krāslava-Paternieki	Krāslava-Indra
LITHUANIA	RUSSIA	Kybartai	Kybartai
	BELARUS	Medininkai	Kena
POLAND	RUSSIA	Grzechotki	Braniewo
	BELARUS	Kukuryki	Terespol
	UKRAINE	Korzowa	Przemysl
ROMANIA	UKRAINE	Siret	Vicsany
	MOLDOVA	Ungheni	Ungheni
	SERBIA	Moravitsa	Moravitsa
SLOVENIA	CROATIA	Obrezje	Dobova
SLOVAKIA	UKRAINE	Cierna nad Tisou	Cierna nad Tisou

3. Further reading

- Road Tolling: Directive 2004/52/EC and Decision 2009/750/EC
http://ec.europa.eu/transport/themes/its/road/application_areas/electronic_pricing_and_payment_en.htm
- Evaluations of the 2007-2013 programming period:
http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm#12
- Transport Investment under Structural and Cohesion Funds in 2007-2013 programmes
http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm
- EU2020 Country Fiches prepared by DG MOVE (Intranet Website)
http://intranet/MOVE-EUROPE-2020/country_profiles.htm

DRAFT

A.7-2 Railway⁵⁰

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7))	<p>ERDF + CF:</p> <ul style="list-style-type: none"> - supporting a multimodal Single European Transport Area by investing in the Trans-European Transport Network (TEN-T) network - developing comprehensive, high quality and interoperable railway systems <p>ERDF:</p> <ul style="list-style-type: none"> - enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure 	<p>7.2. <i>Railway</i>: The existence within the comprehensive transport plan(s) or framework(s) of an explicit section on railway development in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. The investments cover mobile assets, interoperability and capacity building</p>	<ul style="list-style-type: none"> - The existence of a section on railway development within the transport plan(s) or framework(s) as set out above which fulfills legal requirements for strategic environmental assessment and sets out a realistic and mature project pipeline (including a timetable, budgetary framework); - Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding:

- within ERDF/CF to support for:
 - o multimodal Single European Transport Area by investing in the TEN-T network (Art. 5 (7) (a) of the ERDF Regulation and Art.3 (d) (i) of the CF Regulation), and/or
 - o developing comprehensive, high quality and inter-operative railway systems (Art. 5 (7) (d) of the ERDF Regulation and Art.3 (d) (iii) of the CF Regulation);
- within ERDF to support for enhancing regional mobility though connecting secondary and tertiary nodes to TEN-T infrastructure (Art. 5 (7) (b) of the ERDF Regulation).

⁵⁰ The table below is based on the Council compromise text.

2. Definitions⁵¹

Transport mode means railway, inland waterways, road, maritime or/and air transport.

Multimodal transport means the carriage of freight and /or passengers using two or more modes of transports

The comprehensive network constitutes the basic layer of the TEN-T. It consists of all existing and planned infrastructure meeting the requirements of the Guidelines. The comprehensive network is to be in place by 31 December 2050 at the latest.

The core network consists of those parts of the comprehensive TEN-T network which are of the highest strategic importance for the achievement of the objectives concerning the development of the trans-European network. It constitutes the backbone of the multi-modal mobility network. It concentrates on those components of TEN-T with the highest European added value: cross-border missing links, key bottlenecks and multi-modal nodes. It is the outcome of a two-step methodology identifying first main nodes within the EU and then connecting these nodes by multimodal links (road, rail, inland waterway) according to availability or feasibility, taking into account effectiveness and efficiency and preferably using existing infrastructure. The core network is to be in place by 31 December 2030 at the latest.

The core nodes consist of 82 urban main nodes (comprising all Member States' capitals, all "MEGA" cities according to ESPON and all other large urban areas or conurbations, including their entire relevant multimodal infrastructure as far as part of the comprehensive network), ports which exceed a certain volume threshold (at least 1 % of the total transshipment volume of all EU seaports) or provide the only access to a coastline of a NUTS 1 inland region and the 46 most relevant border crossing points. You will find in the annex below the list of nodes concerning each Member State (See the annex attached to the fiche related to Road conditionality).

Lines designated to the Rail Freight Corridors mean lines which are designated to a Rail Freight Corridor on the basis of Regulation 913/2010/EC.

The European Rail Traffic Management System (ERTMS) is the system concerning the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European conventional and high-speed rail systems.

The concept of "realistic and mature project pipeline" has to be understood in the context of the whole project cycle starting from planning until the implementation. It means a list of projects for which:

- A feasibility study (including options analysis and preliminary design) has been concluded;
- There is a positive socio-economic Cost Benefit Analysis (including detailed estimated costs) demonstrating financial feasibility and the need for public financial contributions;

⁵¹ Most of the definitions are based on the Commission's proposal for the TEN-T Regulation – adjustments might therefore intervene in the coming weeks to align them to the outcome of the trilogues on the TEN-T Regulation.

- EIA (environmental impact assessment) and other assessments (e.g. under Habitats and Water Framework Directives) are ideally finished or at least sufficiently advanced (i.e. consultations with the public and other authorities finished) and a development consent is expected without outstanding environmental issues;
- State aid issues are cleared;
- There is a detailed implementation timetable, detailing procurement procedures (call for tenders can be expected to be completed in accordance to the timetable) and permission procedures (these should be ready to start: for instance land expropriations are well advanced and can be completed in sufficient time for the start of the works, as programmed).

3. Source of information for assessment

- Detailed maps of the comprehensive and the core network defined in the TEN-T Guidelines:

http://ec.europa.eu/transport/themes/infrastructure/revision-t_en.htm

- ERTMS - European Deployment Plan and National Deployment Plans

http://ec.europa.eu/transport/rail/interoperability/ertms/edp_map_en.htm

- Rail Freight Corridors

http://ec.europa.eu/transport/modes/rail/infrastructures/rail_freight_oriented_network_en.htm

4. Rationale for the *ex ante* conditionality

A lack of capacities at national and regional level to develop railway infrastructure and modernising mobile assets can seriously undermine the investment in railway infrastructure.

5. Fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>The existence of a section on railway development within the transport plan(s) or framework(s) as set out above which :</i></p> <ul style="list-style-type: none"> ▪ The transport plan(s) or framework(s) contains a section on railway development. 		
<p>– <i>fulfills legal requirements for strategic environmental assessment:</i></p> <ul style="list-style-type: none"> ▪ An environmental report has been carried out to identify, describe and evaluate the likely significant effects on the environment of the implementation of the railway section within the plan or framework for transport investments and reasonable alternatives taking into account the objectives and the geographical scope of the plan or framework for transport investments. ▪ The draft plan or framework for transport investments and the environmental report has been made available to the public and the authorities designated by the Member States who are likely to be concerned by the environmental effects of the implementing plans. ▪ Where the implementation of the plan or framework for transport investments is likely to have significant effects on the environment in another Member State (transboundary effects), a copy of the draft plan or framework and the relevant environmental report has been forwarded to the other Member States. ▪ The environmental report and the opinions expressed in the relevant consultations have been taken into account before the adoption of the plan or framework for transport investments. 		
<p>– <i>sets out a realistic and mature project pipeline (including a timetable, budgetary framework)</i></p> <ul style="list-style-type: none"> ▪ The railway section within the plan or framework for transport investments includes a table containing: <ul style="list-style-type: none"> ○ a list of railway prioritised projects (studies, upgrading or works) that the Member State envisages launching over the period; ○ the foreseen expenditures and a financing plan, ○ a realistic timetable for delivery (including design phase, development consent, procurement and permission procedures, and potential state aid notification) and for implementation (per phase for bigger projects). 		

Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

- The Member State has provided an adequate description of the measures already in place to ensure the capacity of intermediary bodies and beneficiaries to deliver railway project pipeline.
 - These measures are based on the analysis of both railway bottlenecks and of the weaknesses of intermediary bodies and beneficiaries to deliver timely railway project pipeline;
 - These measures cover the deployment of ERTMS and comply with EU obligations on railway governance and corridor management;
 - These measures include training and appropriate internal procedures to monitor and identify potential delays and to ensure a smooth and effective procurement;
 - A early warning system is in place to identify and solve any difficulties rising from intermediary bodies and beneficiaries when delivering railway project pipeline;
 - Adequate assistance schemes are in place to help beneficiaries during procedure and implementation to be able to replace projects quickly when implementation is blocked.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- **TEN-T Regulation: Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))⁵²**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0650:REV1:EN:HTML>

Annex I: Maps of the comprehensive and the core network – Vol. 2/33: Inland waterways and ports, Railways (freight), ports and rail-road terminals

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part02.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part02.pdf)

Annex I: Maps of the comprehensive and the core network – Vol. 3/33: Railways (passengers) and airports, roads, ports, rail-road terminals and airports

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part03.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part03.pdf)

Annex II: List of nodes of the core network

http://ec.europa.eu/transport/themes/infrastructure/doc/final_annexii.pdf

- **Strategic Environmental Assessment (SEA) Directive:**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

An environmental assessment shall be carried out for all plans and programmes which are prepared for transport and which set the framework for future development consent of projects⁵³.

- **Rail Interoperability**

- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community:

This reference will be replaced in the coming weeks to reference reflecting the outcome of the trilogue on the TEN-T Regulation.

⁵³ Annex I and II of the Environmental Impact Assessment Directive 85/337/ECC provide the list of the concerned projects: Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more; Construction of railways or intermodal transshipment facilities, and of intermodals terminals.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:191:0001:0045:EN:PDF>

- ERTMS: COMMISSION DECISION of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:051:0001:0065:EN:PDF>

- DG MOVE Website on Rail and ERTMS

http://ec.europa.eu/transport/rail/interoperability/ertms/edp_map_en.htm

- **Rail Freight Corridors**

- Regulation 913/2010/EC concerning a European Rail Network for Competitive Freight:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:276:0022:0032:EN:PDF>

2. Extract of relevant documents

See the annex of the fiche on Road *ex ante* conditionality.

3. Further reading

- Evaluations of the 2007-2013 programming period:

http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm#12

- Transport Investment under Structural and Cohesion Funds in 2007-2013 programmes

http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm

- EU2020 Country Fiches prepared by DG MOVE (Intranet website)

http://intratren/MOVE-EUROPE-2020/country_profiles.htm

DRAFT

A.8-1 Access to employment⁵⁴

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
8. Promoting employment and supporting labour mobility (Employment target) (referred to in Article 9(8))	ESF: - Access to employment for job-seekers and inactive people, including local employment initiatives and support for labour mobility	8.1. Active labour market policies are designed and delivered in the light of the Employment guidelines.	– Employment services have the capacity to and do deliver: - personalised services and active and preventive labour market measures at an early stage, which prioritise the most vulnerable while being open for all jobseekers; - anticipating and counselling on long-term employment opportunities created by structural shifts in the labour market [such as the shift to a low carbon economy]; - transparent and systematic information on new job vacancies. – Employment services have set up formal or informal cooperation arrangements with relevant stakeholders.

- **When to assess applicability?**

The applicability of this *ex ante* conditionality has to be assessed if a Member State selects the following investment priorities:

- ESF: Access to employment for job-seekers and inactive people, including local employment initiatives and support for labour mobility (Art. 3(1)(a)(i) ESF Reg.).

- **Definitions**

Employment services include a number and variety of service providers on the labour market with a focus on labour market integration. Apart from the public employment services (PES), there are private and third sector employment services, municipalities as well as voluntary and community organisations providing a broad range of employment oriented client services.

The term anticipation is used broadly to encompass activities with the aim of identifying future skill needs.

ILO definition of Labour Market Information (LMI): Any information concerning the size and composition of the labour market or any part of the labour market, the way it or

⁵⁴ This table is partly based on the Council's Partial General Approach (PGA) and partly on the Commission proposal (text in yellow).

any part of its functions, its problems, the opportunities which may be available to it, and the employment-related intentions or aspirations of those who are part of it.

Early intervention is the use of active measures early in relation to the duration of an unemployment spell. The rationale behind early intervention is to prevent long term unemployment by applying active measures as early as possible in an unemployment spell, thus avoiding *depreciation of skills*.

Employer surveys are surveys among employers (private or public) regarding skill needs, competence vacancies, and training. The surveys may be quantitative or qualitative, using questionnaires or interviews.

Forecasting: Quantitative forecasts produce information on quantitative aspects of future labour markets using more or less advanced methods. Quantitative forecasts use data about the present and past to estimate future developments. The results of forecasts are always numbers, often presented in graphical forms as curves showing a trend.

The definition of lifelong guidance adopted in the Resolution of the Council of the European Union (2004) is: “A range of activities (examples include information and advice-giving, counselling, competence assessment, mentoring, advocacy, teaching decision-making and career management skills) that enables citizens of any age and at any point in their lives to identify their capacities, competences and interests, to make educational, training and occupational decisions and to manage their individual life paths in learning, work and other settings in which these capacities and competences are learned and/or used.”

Personalised services means the delivery of services to jobseekers either only face-to-face or by making use of different channels combining online and self-help tools with face-to-face services.

Prevention: Any measure by the PES or other providers prior to unemployment or inactivity that subsequently helps to avoid cases of unemployment or inactivity

Profiling systems are service delivery systems characterized by 1) profiling as a quantitative (statistical forecasts) or qualitative (structured interviews, capability tests) diagnostic tool to identify clients' risks; 2) customer differentiation for giving different customers different access to employment services according to their needs with the aim to target resources.

- **Source of information for assessment**

- National Reform Programmes

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Country-specific Council recommendations

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Member State's legislation on the work of the public employment services and delivery of employment services
- Public Employment Service annual reports

- **Rationale for the *ex ante* conditionality**

Evidence shows personalised services reduce considerably the unemployment spell.

Preventive labour market interventions significantly reduce costs in the long-term for example by (long term) unemployment, social assistance and inactivity.

Career guidance and good anticipation measures allow for well-informed career choices and sustainable employment, at the same time reducing the risks of unemployment and leading to a better allocation of resources.

More transparency on job vacancies increases the dynamics of the labour market and contributes to quickly filling of vacancies.

Services to employers contribute to job creation by employers, working in partnership with education institutes leads to more cost-efficient solutions.

All these elements contribute to increasing cohesion at a lower cost and thus increasing the effectiveness and efficiency of cohesion policy.

- **The fulfilment and non-fulfilment of criteria (Assessment grid):**

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<i>Employment services have the capacity to and do deliver:</i>		
<p><i>- personalised services and active and preventive labour market measures at an early stage, which prioritise the most vulnerable while being open for all jobseekers:</i></p> <ul style="list-style-type: none"> ▪ A profiling system assessing individual strengths and weaknesses and risk of long-term unemployment has been set up and includes individualised information, advice and guidance. ▪ An Individual Action Planning (IAP) based upon mutual obligations (job seekers' rights and responsibilities) has been set up, and a full range of Active Labour Market Policy (ALMP) measures is available. ▪ Measures for early intervention and prevention are in place. ▪ A planning of tailor made support (matching, job search assistance, training or more intensive support for disadvantaged) is in place. 		
<p><i>- anticipating and counselling on long-term employment opportunities created by structural shifts in the labour market [such as the shift to a low carbon economy]:</i></p> <ul style="list-style-type: none"> ▪ Systems for anticipating scope and volume of labour demand are in place. ▪ There are forecasting models to identify long-term tendencies in labour demand. ▪ Employment services have the capacity to deliver evidence-based career guidance services for jobseekers. 		
<p><i>- transparent and systematic information on new job vacancies:</i></p> <ul style="list-style-type: none"> ▪ Actions to provide access to more employment opportunities through enhanced transnational labour mobility (EURES) and transfer of vacancies to the EURES Job Mobility Portal have been set up ▪ A system for a nationwide collection of vacancies is in place and national and regional job vacancies databases are accessible to jobseekers. ▪ A system for a nationwide collection and analysis of labour market data/labour market intelligence (i.e. link to delivery of career guidance services) is in place and focuses on: 		

<ul style="list-style-type: none"> ○ jobs in high demand or hard to be filled (bottlenecks) ○ jobs with a surplus of labour supply ○ trend information and short-term anticipation 		
<p><i>Employment services have set up formal or informal cooperation arrangements with relevant stakeholders:</i></p> <ul style="list-style-type: none"> ▪ There are cooperation arrangements with relevant stakeholders which can include: <ul style="list-style-type: none"> ○ Cooperation with contractors and private employment agencies ○ Cooperation with temporary work agencies (TWA) ○ Cooperation with public services such as social services, municipalities, career guidance providers, etc. ○ Cooperation with non-commercial organisations such as third-sector organisations and NGOs. ○ Cooperation with other labour market stakeholders such as schools and other training providers, Vocational Education and Training (VET) institutions, employers organisations to facilitate the transition to a job ○ Or any other formal or informal cooperation arrangements with relevant stakeholders 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF>

- Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>

2. Extract of relevant documents

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010:

Guideline 7: Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality

Activation is key to increasing labour market participation. Member States should integrate the flexicurity principles endorsed by the European Council into their labour market policies and apply them, making appropriate use of European Social Fund and other EU funds support, with a view to increasing labour market participation and combating segmentation, inactivity and gender inequality, whilst reducing structural unemployment. Measures to enhance flexibility and security should be both balanced and mutually reinforcing. Member States should therefore introduce a combination of flexible and reliable contractual arrangements, active labour market policies, effective lifelong learning, policies to promote labour mobility, and adequate social security systems to secure labour market transitions accompanied by clear rights and responsibilities for the unemployed to actively seek work. Together with the social partners, adequate attention should also be paid to internal flexicurity at the work place.

Member States should step up social dialogue and tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work. Professional mobility should be rewarded. The quality of jobs and employment conditions should be addressed. Member States should combat in-work poverty and promote occupational health and safety. Adequate social security should also be ensured for those on fixed-term contracts and the self-employed. Employment services play an important role in activation and matching and they should therefore be strengthened with personalised services and active and preventive labour market measures at an early stage. Such services and measures should be open to all, including young people, those threatened by unemployment, and those furthest away from the labour market.

Policies to make work pay remain important. In order to increase competitiveness and raise participation levels, particularly for the low-skilled, and in line with economic policy guideline 2, Member States should encourage the right framework conditions for wage bargaining and labour

cost development consistent with price stability and productivity trends. Member States should review tax and benefit systems, and public services capacity to provide the support needed, in order to increase labour force participation and stimulate labour demand. They should promote active ageing, gender equality including equal pay, and the integration in the labour market of young people, people with disabilities, legal migrants and other vulnerable groups. Work-life balance policies with the provision of affordable care and innovation in the manner in which work is organised should be geared to raising employment rates, particularly among young people, older workers and women. Member States should also remove barriers to labour market entry for newcomers, promote self-employment, entrepreneurship and job creation in all areas including green employment and care and promote social innovation.

The EU headline target, on the basis of which Member States will set their national targets, taking into account their relative starting positions and national circumstances, is to aim to raise the employment rate for women and men aged 20-64 to 75 % by 2020, including through the greater participation of young people, older workers and low-skilled workers and the better integration of legal migrants.

3. Further reading:

Public Employment Services (PES)

- PES website on DG EMPL including study on PES Business Models, all PES network documents, etc.
<http://ec.europa.eu/social/main.jsp?catId=105&langId=en>
- PARES – partnerships between employment services including studies, papers on contracting out, subcontracting in PES:
<http://ec.europa.eu/social/main.jsp?catId=991&langId=en>
- PES to PES Dialogue – Commission's Mutual Learning Programme for PES
(<http://ec.europa.eu/social/main.jsp?catId=964&langId=en>)
- European Job Mobility Laboratory (LabMob) – network of researchers, study about PES business models ; annual survey about PES adjustment to crisis
(<http://www.mobilitypartnership.eu/WebApp/Home.aspx>)
- PES benchmarking group (PROGRESS) including 24 PES, developing a system of common performance indicators for PES <http://www.pes-benchmarking.eu/english/about.asp?IdPageLv=1>)

EURES

- (SWD (2012) 100) Reforming EURES to meet the goals of Europe 2020:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0100:FIN:EN:PDF>
- EURES Job Mobility Portal: <http://ec.europa.eu/eures/home.jsp?lang=en>

DRAFT

A.8-2 Self-employment⁵⁵

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>8. Promoting employment and supporting labour mobility</p> <p>(Employment target)</p> <p>(referred to in Article 9(8))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Self-employment, entrepreneurship and business creation <p>ERDF:</p> <ul style="list-style-type: none"> - development of business incubators and investment support for self-employment, micro-enterprises and business creation 	<p>8.2. <i>Self-employment, entrepreneurship and business creation</i>: the existence of a strategic policy framework for inclusive start-up.</p>	<p>A strategic policy framework for inclusive start-up support is in place with the following elements:</p> <ul style="list-style-type: none"> - measures to reduce the time to set up businesses to three working days and the cost to EUR 100; - measures to reduce the time needed to get licenses and permits to take up and perform the specific activity of an enterprise business to three months; - actions linking suitable business development services and financial services (access to capital), including the outreach to disadvantaged groups and/or areas where needed.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State selects the following investment priorities:

- **ESF**: self-employment, entrepreneurship and business creation (Art. 3(1)(a)(iii) ESF Reg.).
- **ERDF**: development of business incubators and investment support for self-employment and business creation (Art. 5(8)(a) ERDF Reg.).

2. Definitions

A strategic policy framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. It sets out the scope, timeframe, concrete and comprehensive objectives, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

In the context of entrepreneurship policies, this generally means:

- working across, and establishing coherent actions between departmental responsibilities and levels or government (national, regional and local); engaging

⁵⁵ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

with business support organisations and organisations representing entrepreneurs interests;

- outlining lead responsibilities for each phase of the framework and a mechanism for timely decisions in the deployment of the policy that recognises the interdependence of the stakeholders (government departments, business support organisations, entrepreneur representative bodies, financial institutions);
- ensuring quality assurance systems for finance and business development service providers
- presenting a comprehensive vision of entrepreneurship support addressing the following points (even if not all obstacles might be tackled at once):
 - o a welfare bridge (pre-start income and social security support for preparation the business start);
 - o actions to raise awareness and develop entrepreneurial skills;
 - o pre-start-up and post start up business development support (tailored training coaching, mentoring, networking support);
 - o actions to provide access to finance, notably micro-finance.

Suitable business development services support means:

- provision of tailor-made services to the customers;
- contribution to the creation of sustainable businesses.

It can include:

- skills training (such as in accountancy and marketing);
- coaching and mentoring;
- business incubators;
- one stop shops offering a genuine support system made up of clearly defined stages like profiling, planning, start-up, consolidation and growth.

Financial services (access to capital) means:

- provision of guarantees, loans, in particular microloans, equity, grants or a combination of them to facilitate access to finance for entrepreneurs;
- facilitating the provision of the products mentioned in the previous point, e.g. through capacity building of financial institutions, including through transnational exchanges of experience.

Outreach to disadvantaged groups means that the strategy and actions explicitly address:

- The needs of those considering starting up an enterprise or becoming self-employed from disadvantaged or underrepresented target groups (in particular the unemployed, young people, seniors, migrants, people with a handicap, people living in disadvantaged areas...), women, and economically inactive people;
- Different forms of business creation, e.g. full-time and part-time, individual and collective, profit-oriented and social enterprises, etc.
- All entrepreneurship support activities from awareness raising, the generation of motivation and interest, development of entrepreneurial skills (in formal

education and through tailored training provision/mentoring etc.), the assessment and, where necessary, the development of specific competences to start up an enterprise, access to finance initiatives, incubator and other property assistance, support to reach new markets and other support in the first few years of business activity. How each of these activities will relate to others should be explicitly spelt out.

- How the strategy will make use of all resources available for entrepreneurship support.

3. Source of information for assessment

- Small Business Act country fact sheets:
http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm
- Europe 2020, thematic summary fiche on SME access to finance:
http://ec.europa.eu/europe2020/pdf/themes/08_sme_access_to_finance.pdf
- Member States' National Reform Programme (NRP):
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Country-specific Council Recommendations (CSRs):
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Document (SWD) on the assessment of the National Reform Programmes and the Stability/Convergence Programmes:
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

4. Rationale for the *ex ante* conditionality

Complementing financial services through business development services (e.g. training, coaching and mentoring) is particularly important when targeting entrepreneurs from disadvantaged groups. It enhances the survival rates and growth chances of their businesses and also reduces the credit default risk for finance providers.

Presenting a comprehensive vision of entrepreneurship support is key to achieving synergies between the different types of support and facilitates the creation of a favourable business environment. Although it might be impossible to tackle all problems at the same time, it avoids a piecemeal approach and helps to take into account all factors that ease or hinder business creation.

Working across (government) departments and levels and with all relevant stakeholders facilitates the creation of a common vision that allows reducing resistance to change. It also ensures synergies between actions of different levels involved, to support access to finance, and to offer business development systems for entrepreneurship and self-employment, throughout all phases of entrepreneurial activity, in order to link financial support with business services for starters.

Entrepreneurship and self-employment are labour market activation tools. Reaching out to disadvantaged groups helps thus create jobs (between 30 and 50% of new businesses are, for instance, created by unemployed people) and to foster economic and social inclusion by setting free people's creativity and innovation potential. Experience shows that in many cases the savings in social benefits have exceeded by far the investment made by public authorities in micro-finance or start-up support schemes.

DRAFT

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A strategic policy framework for inclusive start-up support is in place ...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the plan and indicates where it or its different elements are published (in the form of a link). 		
<p><i>...with the following elements:</i></p>		
<p>– <i>measures to reduce the time to set-up business to 3 working days and the cost to max. 100€:</i></p> <ul style="list-style-type: none"> ▪ measures to reduce the time to set-up business to 3 working days are in place; ▪ measures to reduce the cost to set-up business to max. 100€ are in place. 		
<p>– <i>measures to reduce the time needed to get licenses and permits to take up and perform the specific activity of an enterprise up to 3 months are in place.</i></p>		
<p>– <i>Actions linking suitable business development services and financial services (access to capital)</i></p> <ul style="list-style-type: none"> ▪ business development services and financial services are made available as part of a comprehensive package of support measures. <p>– <i>including the outreach to disadvantaged groups and/or areas where needed</i></p> <ul style="list-style-type: none"> ▪ Needs analysis of disadvantaged and underrepresented groups has been made. ▪ Integrated approach responding to the needs of the targeted groups outlining all the entrepreneurship support activities and how they relate to each other. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Employment Guidelines: 2010/707/EU: Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010D0707:EN:NOT>

- Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>

2. Extract of relevant documents

- Employment Guidelines: 2010/707/EU: Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States

Employment guidelines

Guideline 7: “Member States should also remove barriers to labour market entry for newcomers, promote self-employment, entrepreneurship and job creation in all areas including green employment and care and promote social innovation.”

Guideline 8: "Member States should develop (...) should (...) promote the acquisition of transversal competences to support creativity, innovation and entrepreneurship. (...) In cooperation with social partners and firms, Member States should improve access to training, strengthen education and career guidance. These improvements should be combined with the provision of systematic information on new job openings and opportunities, the promotion of entrepreneurship and enhanced anticipation of skill needs.

3. Further reading

Tools developed by the Community of practice for inclusive entrepreneurship (COPIE - network of ESF managing authorities):

- *COPIE diagnosis tool*: a standardised instrument for assessing local or regional business support infrastructures and their inclusive approach towards entrepreneurship. Between 2007 and 2011, the COPIE diagnosis tool was applied to 18 European regions and cities.

<http://www.cop-ie.eu/copie-tools-copie-diagnosis-tool>

- *COPIE Action planning tools*: tools for developing and sustaining effective inclusive entrepreneurship policies focussing on developing a common vision, agreeing an evaluation strategy, building an integrated campaign and planning for a legacy.

<http://www.cop-ie.eu/copie-tools-action-planning>

- *COPIE Entrepreneurship Education Diagnosis Tool*: tool to help policy makers to identify, analyse and reflect on the main strengths and gaps in their entrepreneurship education.

<http://www.cop-ie.eu/copie-tools-entrepreneurship-education>

- *COPIE quality management tools*: tools to ensure quality in start-up support including a model of qualification and certification for business advisors.

<http://www.cop-ie.eu/copie-tools-quality-management>

- *COPIE manual on access to finance*: manual on how to build and implement microfinance support programmes using the ESF.

<http://www.cop-ie.eu/copie-tools-access-to-finance>

Policy documents:

- **Entrepreneurship 2020 Action Plan: Reigniting the entrepreneurial spirit in Europe**, Brussels, COM(2012) 795 final, 9.1.2013

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0795:FIN:en:PDF>

- **Commission Communication “Towards a job-rich recovery”**: COM(2012) 173 final, 18.4.2012

<http://ec.europa.eu/social/BlobServlet?docId=7619&langId=en>

Research:

- Commission - OECD policy briefs, e.g. on Youth Entrepreneurship

http://ec.europa.eu/youth/news/20120504-youth-entrepreneurship-employment_en.htm

- OECD annual report on Inclusive Entrepreneurship (to be published end of April 2013).

- 2012: Eurobarometer survey on Entrepreneurship

<http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/eurobarometer/>

- Global Entrepreneurship Monitor survey country reports

<http://www.gemconsortium.org/>

DRAFT

A. 8-3 Labour market institutions⁵⁶

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>8. Promoting employment and supporting labour mobility</p> <p>(Employment target)</p> <p>(referred to in Article 9(8))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Modernisation and strengthening of labour market institutions, including actions to enhance transnational labour mobility <p>ERDF:</p> <ul style="list-style-type: none"> - investing in infrastructure for public employment services 	<p>8.3. - Labour market institutions are modernised and strengthened in the light of the Employment Guidelines;</p> <ul style="list-style-type: none"> - Reforms of labour market institutions will be preceded by a clear strategic policy framework and <i>ex ante</i> assessment including the gender dimension 	<ul style="list-style-type: none"> - Actions to reform employment services, aiming at providing them with the capacity to deliver: - personalised services and active and preventive labour market measures at an early stage, which prioritise the most vulnerable while being open for all jobseekers; - counselling on long-term employment opportunities created by structural shifts in the labour market [such as the shift to the low carbon economy]; - transparent and systematic information on new job openings. - Reform of employment services will include the creation of formal or informal cooperation arrangements with relevant stakeholders.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State selects the following investment priorities:

- **ESF:** Modernisation and strengthening of labour market institutions, including actions to enhance transnational labour mobility (Art. 3(1)(a)(vii) ESF Reg.).
- **ERDF:** Investing in infrastructure for public employment services (Art. 5(8)(c) ERDF Reg.)

2. Definitions

Employment services include a number and variety of service providers on the labour market with a focus on labour market integration. Apart from the public employment services, there are private and third sector employment services, municipalities as well as voluntary and community organisations providing a broad range of employment oriented client services.

⁵⁶ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

The term anticipation is used broadly to encompass activities with the aim of identifying future skill needs.

ILO definition of Labour Market Information (LMI): Any information concerning the size and composition of the labour market or any part of the labour market, the way it or any part of it functions, its problems, the opportunities which may be available to it, and the employment-related intentions or aspirations of those who are part of it.

Early intervention is the use of active measures early in relation to the duration of an unemployment spell. The rationale behind early intervention is to prevent long term unemployment by applying active measures as early as possible in an unemployment spell, thus avoiding *depreciation of skills*.

Employer surveys are surveys among employers (private or public) regarding skill needs, competence vacancies, and training. The surveys may be quantitative or qualitative, using questionnaires or interviews.

Forecasting: Quantitative forecasts produce information on quantitative aspects of future labour markets using more or less advanced methods. Quantitative forecasts use data about the present and past to estimate future developments. The results of forecasts are always numbers, often presented in graphical forms as curves showing a trend.

Infrastructure covers investments in refurbishing existing or construction of new physical facilities and/or necessary equipment. Mapping of the necessary infrastructure investments should take place, which will serve as the basis for their long-term optimisation and sustainability, as well as the framework for co-financed investments. Relevant considerations such as demographic and territorial factors should be taken into account.

The definition of lifelong guidance adopted in the Resolution of the Council of the European Union (2004) is: “A range of activities (examples include information and advice-giving, counselling, competence assessment, mentoring, advocacy, teaching decision-making and career management skills) that enables citizens of any age and at any point in their lives to identify their capacities, competences and interests, to make educational, training and occupational decisions and to manage their individual life paths in learning, work and other settings in which these capacities and competences are learned and/or used.”

Personalised services means the delivery of services to jobseekers either only face-to-face or by making use of different channels combining online and self-help tools with face-to-face services.

Prevention: Any measure by the PES or other providers prior to unemployment or inactivity that subsequently helps to avoid cases of unemployment or inactivity

Profiling systems are service delivery systems characterized by 1) profiling as a quantitative (statistical forecasts) or qualitative (structured interviews, capability tests) diagnostic tool to identify clients' risks; 2) customer differentiation for giving different customers different access to employment services according to their needs with the aim to target resources.

3. Source of information for assessment

- National Reform Programmes

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Country-specific Council recommendations

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Member State's legislation on the work of the public employment services
- PES (Public Employment Service) annual reports

4. Rationale for the *ex ante* conditionality

Evidence shows personalised services reduce considerably the unemployment spell.

Preventive labour market interventions significantly reduce costs in the long-term for example by (long term) unemployment, social assistance and inactivity.

Career guidance and good anticipation measures allow for well-informed career choices and sustainable employment, at the same time reducing the risks of unemployment and leading to a better allocation of resources.

More transparency on job vacancies increases the dynamics of the labour market and contributes to quickly filling of vacancies.

Services to employers contribute to job creation by employers, working in partnership with education institutes leads to more cost-efficient solutions.

Infrastructure investments are necessary in order that the personalised services and labour market measures are physically available for all job seekers and are appropriately located for meeting the needs of the most vulnerable. In order to be effective, co-financed infrastructure investments in public employment services should be closely linked to the general policy strategic approach.

All these elements contribute to increasing cohesion at a lower cost and thus increasing the effectiveness and efficiency of cohesion policy.

Geographical mobility leads to higher GDP in receiving countries/regions (see also Employment in Europe report 2008 and 2011).

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<i>Actions to reform employment services, aiming at providing them the capacity to deliver:</i>		
<p>- <i>Personalised services and active and preventive labour market measures at an early stage, which prioritise the most vulnerable while being open for all jobseekers:</i></p> <ul style="list-style-type: none"> ▪ Depending on the identified needs, reform actions include : <ul style="list-style-type: none"> ○ The set-up of a profiling system assessing individual strengths and weaknesses and risk of long-term unemployment including individualised information, advice and guidance. ○ The development of Individual Action Planning (IAP) based upon mutual obligations (job seekers' rights and responsibilities) and of a full range of Active Labour Market Policy (ALMP) measures. ○ The development of measures for early intervention and prevention. ○ The development of tailor made support (matching, job search assistance, training or more intensive support for disadvantaged). ○ Complementary physical infrastructure development in order to ensure that the services and measures can be effectively supplied and are accessible to vulnerable groups. 		
<p>- <i>counselling on long-term employment opportunities created by structural shifts in the labour market [such as the shift to the low carbon economy]:</i></p> <ul style="list-style-type: none"> ▪ Depending on the identified needs, reform actions include : <ul style="list-style-type: none"> ○ The development of systems for anticipating scope and volume of labour demand as well as forecasting models to identify long-term tendencies in labour demand. ○ Capacity building to deliver evidence-based career guidance services for jobseekers. 		
<p>- <i>transparent and systematic information on new job openings:</i></p> <ul style="list-style-type: none"> ▪ Depending on the identified needs, reform actions include : <ul style="list-style-type: none"> ○ Actions to provide access to more employment opportunities through enhanced transnational labour mobility (EURES) and transfer of vacancies to the EURES Job Mobility Portal 		

<ul style="list-style-type: none"> ○ The development of a system for a nationwide collection of vacancies and for making national and regional job vacancies databases accessible to jobseekers. ○ The development of a system for a nationwide collection and analysis of labour market data/labour market intelligence. 		
<p><i>Reform of employment services will include the creation of formal or informal cooperation arrangements with relevant stakeholders:</i></p> <ul style="list-style-type: none"> ▪ Depending on the identified needs, reform actions include: <ul style="list-style-type: none"> ○ Cooperation with contractors and private employment agencies ○ Cooperation with temporary work agencies (TWA) ○ Cooperation with public services such as social services, municipalities, career guidance providers, etc. ○ Cooperation with non-commercial organisations such as third-sector organisations and NGOs. ○ Cooperation with other labour market stakeholders such as schools and other training providers, Vocational Education and Training (VET) institutions, employers organisation to facilitate the transition to a job ○ Or any other formal or informal cooperation arrangements with relevant stakeholders 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF>

- Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>

2. Extract of relevant documents

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010:

Guideline 7: Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality

Activation is key to increasing labour market participation. Member States should integrate the flexicurity principles endorsed by the European Council into their labour market policies and apply them, making appropriate use of European Social Fund and other EU funds support, with a view to increasing labour market participation and combating segmentation, inactivity and gender inequality, whilst reducing structural unemployment. Measures to enhance flexibility and security should be both balanced and mutually reinforcing. Member States should therefore introduce a combination of flexible and reliable contractual arrangements, active labour market policies, effective lifelong learning, policies to promote labour mobility, and adequate social security systems to secure labour market transitions accompanied by clear rights and responsibilities for the unemployed to actively seek work. Together with the social partners, adequate attention should also be paid to internal flexicurity at the work place.

Member States should step up social dialogue and tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work. Professional mobility should be rewarded. The quality of jobs and employment conditions should be addressed. Member States should combat in-work poverty and promote occupational health and safety. Adequate social security should also be ensured for those on fixed-term contracts and the self-employed. Employment services play an important role in activation and matching and they should therefore be strengthened with personalised services and active and preventive labour market measures at an early stage. Such services and measures should be open to all, including young people, those threatened by unemployment, and those furthest away from the labour market.

Policies to make work pay remain important. In order to increase competitiveness and raise participation levels, particularly for the low-skilled, and in line with economic policy guideline 2, Member States should encourage the right framework conditions for wage bargaining and labour cost development consistent with price stability and productivity trends. Member States should review tax and benefit systems, and public services capacity to provide the support needed, in order to increase labour force participation and stimulate labour demand. They should promote active ageing, gender equality including equal pay, and the integration in the labour market of young people, people with disabilities, legal migrants and other vulnerable groups. Work-life balance policies with the provision of affordable care and innovation in the

manner in which work is organised should be geared to raising employment rates, particularly among young people, older workers and women. Member States should also remove barriers to labour market entry for newcomers, promote self-employment, entrepreneurship and job creation in all areas including green employment and care and promote social innovation.

The EU headline target, on the basis of which Member States will set their national targets, taking into account their relative starting positions and national circumstances, is to aim to raise the employment rate for women and men aged 20-64 to 75 % by 2020, including through the greater participation of young people, older workers and low-skilled workers and the better integration of legal migrants.

3. Further reading:

Public Employment Services (PES)

- PES website on DG EMPL including study on PES Business Models, all PES network documents, etc.
<http://ec.europa.eu/social/main.jsp?catId=105&langId=en>
- PARES – partnerships between employment services including studies, papers on contracting out, subcontracting in PES:
<http://ec.europa.eu/social/main.jsp?catId=991&langId=en>
- PES to PES Dialogue – Commission's Mutual Learning Programme for PES
(<http://ec.europa.eu/social/main.jsp?catId=964&langId=en>)
- European Job Mobility Laboratory (LabMob) – network of researchers, study about PES business models ; annual survey about PES adjustment to crisis
(<http://www.mobilitypartnership.eu/WebApp/Home.aspx>)
- PES benchmarking group (PROGRESS) including 24 PES, developing a system of common performance indicators for PES
<http://www.pes-benchmarking.eu/english/about.asp?IdPageLv=1>)

EURES

- Reforming EURES to meet the goals of Europe 2020 (SWD (2012) 100):
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2012:0100:FIN:EN:PDF>
- EURES Job Mobility Portal:
<http://ec.europa.eu/eures/home.jsp?lang=en>

DRAFT

A.8-4 Active and healthy ageing⁵⁷

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
8.Promoting employment and supporting labour mobility (Employment target) (referred to in Article 9(8))	ESF: - Active and healthy ageing	8.4. <i>Active and healthy ageing</i> : Active ageing policies are designed in the light of the Employment Guidelines.	Actions to deliver on active and healthy ageing challenges: Relevant stakeholders are involved in the design and follow-up of active ageing policies with a view to retaining elderly workers on the labour market and promote their employment. - A Member State has measures in place to promote active ageing and to reduce early retirement.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State selects the following investment priority:

- **ESF: Active and healthy ageing** (Art. 3(1)(a)(iv) ESF Reg.)

2. Definitions

Relevant stakeholders are typically competent ministries and government agencies at national and sub-national level, social partners, pension institutions, training institutions and non-governmental organisations representing older workers.

Member State measures in place typically relate to policies facilitating older workers to remain in the labour force and to policies dissuading older workers to leave the labour force prematurely.

3. Source of information for assessment

- Member State's National Reform Programme (NRP) including National Job Plan

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Country-specific Council Recommendations (CSRs) on Member States' National Reform Programme

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

⁵⁷ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

- Commission Staff Working Document (SWD) on the assessment of the National Reform Programmes and the Stability/Convergence Programmes http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

4. Rationale for the *ex ante* conditionality

To measure progress in meeting the Europe 2020 goals of smart, sustainable and inclusive growth, headline targets have been agreed for the whole EU. The Europe 2020 strategy sets a headline target of 75% of the population aged 20 to 64 years to be in employment (employment rate).

Reaching this employment target heavily relies on older workers to remain on the labour market.

Poor performance in the area of active ageing can have many causes, i.e. low retirement age, low exit age, obsolete skills, insufficient contract flexibility, age discrimination, poor health, etc. Actions to support active ageing will generally aim at maintaining the employability of older workers (ex. access to continuous vocational training, adaptation of working conditions or working environments, etc.) and at eliminating obstacles to working longer and/or to create incentives to working longer (ex. flexible working-retirement arrangements, fiscal incentives to working longer, phased out early retirement schemes, measures addressing leaving the labour market early due to poor health, measures addressing health of the older worker, etc.).

Cohesion policy investment in active and healthy ageing must be supported by measures supporting the reduction of early retirement and ensuring that the returns on investments in active ageing are not undermined by counter-productive policies.

Involving relevant stakeholders in the design and implementation of these policies will increase and/or condition their success and thus the effectiveness of cohesion policy instruments.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<i>Actions to deliver on active and healthy ageing challenges:</i>		
<p>– <i>Relevant stakeholders are involved in the design and follow-up of active ageing policies with a view to retaining elderly workers on the labour market and promote their employment:</i></p> <ul style="list-style-type: none"> ▪ There is a clear identification of all actors involved. ▪ Relevant stakeholders are involved in the design and follow-up of active ageing policies. 		
<p>– <i>The Member State has measures in place to promote active ageing and to reduce early retirement</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of the labour market situation of older workers and an identification of the main reasons for poor performance in the area of active ageing⁵⁸ ▪ There is a clear identification of, and link with, the measures proposed. ▪ There are measures in place to maintain the employability of older workers⁵⁹. ▪ There are measures in place to eliminate obstacles to working longer and/or there are incentives in place to working longer⁶⁰. 		

⁵⁸ See section 4 for examples of reasons for poor performance.

⁵⁹ See section 4 for examples.

⁶⁰ See section 4 for examples.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010D0707:EN:NOT>

- Council Decision 2012/238/EU of 26 April 2012 prolonging the Employment Guidelines for 2012:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>

2. Extract of relevant documents

- Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010

Guideline 7: Increasing labour market participation of women and men, reducing structural unemployment and promoting job quality.

Activation is key to increasing labour market participation. Member States should integrate the flexicurity principles endorsed by the European Council into their labour market policies and apply them, making appropriate use of European Social Fund and other EU funds support, with a view to increasing labour market participation and combating segmentation, inactivity and gender inequality, whilst reducing structural unemployment. Measures to enhance flexibility and security should be both balanced and mutually reinforcing. Member States should therefore introduce a combination of flexible and reliable contractual arrangements, active labour market policies, effective lifelong learning, policies to promote labour mobility, and adequate social security systems to secure labour market transitions accompanied by clear rights and responsibilities for the unemployed to actively seek work. Together with the social partners, adequate attention should also be paid to internal flexicurity at the work place.

Member States should step up social dialogue and tackle labour market segmentation with measures addressing precarious employment, underemployment and undeclared work. Professional mobility should be rewarded. The quality of jobs and employment conditions should be addressed. Member States should combat in-work poverty and promote occupational health and safety. Adequate social security should also be ensured for those on fixed-term contracts and the self-employed. Employment services play an important role in activation and matching and they should therefore be strengthened with personalised services and active and preventive labour market measures at an early stage. Such services and measures should be open to all, including young people, those threatened by unemployment, and those furthest away from the labour market.

Policies to make work pay remain important. In order to increase competitiveness and raise participation levels, particularly for the low-skilled, and in line with economic policy guideline 2, Member States should encourage the right framework conditions for wage bargaining and labour cost development consistent with price stability and productivity trends. Member States should review tax and benefit systems, and public services capacity to provide the support needed, in order to increase labour force participation and stimulate labour demand. They should **promote active ageing**, gender equality including equal pay, and the integration in the labour market of young people, people with disabilities, legal migrants and other vulnerable groups. Work-life balance policies with the provision of affordable care and innovation in the manner in which work is organised should be geared to raising employment rates, particularly among young people, older workers and women. Member States should also remove barriers to labour market

entry for newcomers, promote self-employment, entrepreneurship and job creation in all areas including green employment and care and promote social innovation.

The EU headline target, on the basis of which Member States will set their national targets, taking into account their relative starting positions and national circumstances, is to aim to raise the employment rate for women and men aged 20-64 to 75 % by 2020, including through the greater participation of young people, older workers and low-skilled workers and the better integration of legal migrants.

Guideline 8: Developing a skilled workforce responding to labour market needs and promoting lifelong learning.

Member States should promote productivity and employability through an adequate supply of knowledge and skills to match current and future demand in the labour market. Quality initial education and attractive vocational training must be complemented with effective incentives for lifelong learning for those who are in and those who are not in employment, thus ensuring every adult the chance to retrain or to move one step up in their qualification and overcome gender stereotypes, as well as by opportunities for second-chance learning and by targeted migration and integration policies. Member States should develop systems for recognising acquired competencies, and should remove barriers to occupational and geographical mobility of workers, promote the acquisition of transversal competences to support creativity, innovation and entrepreneurship. In particular, efforts should focus on supporting those with low and obsolete skills, **increasing the employability of older workers**, enhancing training, skills and experience of highly skilled workers, including researchers and women in scientific, mathematical and technological fields.

In cooperation with social partners and firms, Member States should improve access to training, strengthen education and career guidance. These improvements should be combined with the provision of systematic information on new job openings and opportunities, the promotion of entrepreneurship and enhanced anticipation of skill needs. Investment in human resource development, up-skilling and participation in lifelong learning schemes should be promoted through joint financial contributions from governments, individuals and employers. To support young people and in particular those not in employment, education or training, Member States, in cooperation with the social partners, should enact schemes to help those people find initial employment, job experience, or further education and training opportunities, including apprenticeships, and should intervene rapidly when young people become unemployed.

Regular monitoring of the performance of up-skilling and anticipation policies should help identify areas for improvement and increase the responsiveness of education and training systems to current and emerging labour market needs, such as the low-carbon and resource-efficient economy. The ESF and other EU funds should be mobilised, where appropriate, by Member States to support these objectives. Policies stimulating labour demand could complement investments in human capital.

- Council Decision 2012/238/EU of 26 April 2012 prolonging the Employment Guidelines for 2012

The guidelines for the employment policies of the Member States, as set out in the Annex to Decision 2010/707/EU, are hereby maintained for 2012 and shall be taken into account by the Member States in their employment policies.

3. Further reading

- The Annual Growth Survey – Priorities at EU level
http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index_en.htm
- The Joint Employment Report
http://ec.europa.eu/europe2020/pdf/ags2013_emplr_en.pdf
- Council conclusions on Healthy and Dignified ageing (December 2009)
- Press release:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/111599.pdf

- Council conclusions:

<http://register.consilium.europa.eu/pdf/en/09/st14/st14996.en09.pdf>

- Council conclusions on Active Ageing (7 June 2010)
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/lsa/114968.pdf
- Council conclusions on Healthy Ageing across the Lifecycle (7 December 2012)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:396:0008:0011:EN:PDF>
- Council Declaration on the European Year for Active Ageing and Solidarity between Generations (2012): The Way Forward (6 December 2012)
<http://europa.eu/ey2012/BlobServlet?docId=9611&langId=en>
- European Year for Active Ageing and Solidarity between Generations
<http://europa.eu/ey2012/>

DRAFT

A.8-5 Adaptation of workers, enterprises/entrepreneurs to change⁶¹

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
Promoting employment and supporting labour mobility (Employment target) (referred to in Article 9(8))	ESF: - Adaptation of workers, enterprises and entrepreneurs to change	8.5. <i>Adaptation of workers, enterprises and entrepreneurs to change</i> The existence of policies aimed at favouring anticipation and good management of change and restructuring.	Effective instruments are in place to support social partners and public authorities to develop proactive approaches towards change and restructuring.

1. When to assess applicability?

The applicability of this conditionality has to be assessed if a Member State or a region selects the following investment priority:

- **ESF:** Adaptation of workers, enterprises and entrepreneurs to change (Art. 3(1)(a)(v) ESF Reg.)

2. Definitions

Policies aimed at favouring anticipation and good management of change and restructuring encompass a variety of integrated measures that help anticipate, prepare and manage restructuring and change with a particular emphasis on efforts to mitigate the negative consequences of restructuring on individual workers and the wider community as far as possible.

Proactive approaches towards change allow long-term strategic planning, adaptability and employability. These can notably include:

- the creation of employment and skills observatories which act in cooperation with the relevant actors
- taking action in order to favour matching between education and training opportunities offered by institutions to the needs of companies and sectors

Evaluation and reporting mechanisms can include:

- collection of data on dismissals at national, regional and sectoral level;
- studies on the impact of restructuring in specific sectors and regions more severely affected;
- exchange of best practices;
- The public employment services follow-up of redundant employees over a defined period of time.

⁶¹ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

3. Source of information for assessment

- National Background papers
<http://ec.europa.eu/social/main.jsp?catId=819&langId=en>
- European Synthesis Report:
<http://ec.europa.eu/social/main.jsp?catId=819&langId=en>

4. Rationale for the *ex ante* conditionality

Experience shows that pre-existing support mechanisms contribute to reinforce the capacity of companies, workers and regions to make quick and smooth employment and economic transitions, as measured by the re-employment rate of workers risking redundancy, the creation of new businesses in regions affected by restructuring, etc.

Those support mechanisms will therefore increase the impact of financial support delivered in the framework of cohesion policy.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<i>Effective instruments are in place to support social partners and public authorities to develop proactive approaches towards change and restructuring</i>		
<ul style="list-style-type: none"> – There are measures to promote anticipation of change: <ul style="list-style-type: none"> ▪ Measures are taken in order to allow long-term strategic planning, adaptability and employability. ▪ Anticipation of employment and skills needs by developing forecast and foresight tools on employment and skills needs 		
<ul style="list-style-type: none"> – There are measures to ameliorate the preparation and management of restructuring processes: <ul style="list-style-type: none"> ▪ Measures to prepare and manage the restructuring process are taken at an early stage ▪ A clear business rationale for change and restructuring is presented. ▪ Individual support for employees made redundant is available (access to financial and administrative tools, workers mobility is facilitated, incentives to create jobs for SMEs/self employed are available...) ▪ External actors, such as the regional and local authorities, companies of the supply chain, SMEs, are involved throughout the restructuring process 		
<p>There are evaluation and reporting mechanisms:</p> <ul style="list-style-type: none"> ▪ Evaluation and reporting mechanisms are in place 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A shared commitment for employment – COM(2009)257 final.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0257:en:NOT>

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An Integrated Industrial Policy for the Globalisation Era Putting Competitiveness and Sustainability at Centre Stage – COM(2010)614 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0614:EN:NOT>

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Towards a Single Market Act For a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another – COM(2010)608 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0608:EN:NOT>

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -An Agenda for new skills and jobs: A European contribution towards full employment – COM(2010)682 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0682:EN:NOT>

2. Extract of relevant documents

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A shared commitment for employment – COM(2009)257 final.
-

2.1. MAINTAINING EMPLOYMENT, CREATING JOBS, PROMOTING MOBILITY

Temporary short time working arrangements have been effective in maintaining employment in several Member States, especially if accompanied by financial support for income loss and training. They are an important part of the EU flexicurity principles and the national flexicurity pathways. These arrangements can save considerable firing and (re)hiring costs for firms, prevent the loss of firm-specific human capital, and at the same time enhance workers' employability. They should be temporary and well-targeted, not undermine labour participation and competitiveness, and SMEs and workers on non-permanent contracts should also benefit.

Creating jobs requires the right environment for entrepreneurship, innovation and self-employment as well as a stronger focus on demand side policies. Similarly, a practical culture of anticipation and management of business restructuring - with the participation of companies, workers, social partners and public authorities - can improve competitiveness and adaptability, and secure career paths for workers while preserving the economic fabric of regions and communities. The Commission welcomes the EU social partners' joint work on restructuring, which should serve as the basis for better informed practices. Agreements involving public employment services and social partners could ensure that workers who are made redundant get the support they need to find new employment including training. Member States can grant State aid in favour of newly created small enterprises in assisted regions or by women entrepreneurs. Eurofound, the European Foundation for the improvement of living and working conditions, and Cedefop, the European centre for the development of vocational training, will be mobilized to provide information and expertise on managing change and skills forecasting.

Even in the midst of the current crisis, many job vacancies remain unfulfilled across Europe due to mismatches between skills offered and labour market needs. Workers who lose their job should be given a better opportunity to seek employment abroad without losing their entitlement to unemployment benefits in their country of residence; this possibility exists but is generally limited to a short, three-month period. Mobility is also currently very limited, including for apprentices and trainees, due to the very different situations of the Member States and to citizens' lack of information on mobility opportunities. Public employment services have a key role to play in this context. An effective implementation of the Posted Workers Directive requires reinforced administrative cooperation and exchange of good practice.

Proposed priority actions:

Better use of short-time working arrangements

- The development by Member States of effective schemes, supported by the European Social Fund (ESF), to maintain viable employment and optimise the impact of temporary short-time working arrangements and training while avoiding negative spill-overs (see Annex 2).

Better anticipation and management of restructuring

- The Commission has established a practical 'Toolkit for restructuring'[4]; on this basis, an exchange of experiences between all stakeholders could lead to the development of best practices to facilitate anticipation and management of business restructuring, with the support of the ESF;

- To facilitate restructuring processes, social partners could establish sectoral partnerships i.e. specific action plans and burden sharing agreements with regional and local authorities with ESF support. With the support of the Commission, such partnerships could suit sectors facing EU-wide challenges and draw on the example of the car industry. Similarly, social partners and local authorities should establish, wherever possible, negotiated agreements to help workers facing redundancy to find a new job through training, coaching and jobs search: redundancy should only be the last option.

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
- An Integrated Industrial Policy for the Globalisation Era Putting Competitiveness and Sustainability at Centre Stage – COM(2010)614 final

7.2. Structural excess capacities

An important priority of the new industrial policy must be to help EU industry to recover swiftly and to make the necessary adjustments after the economic crisis. In particular, the emergence of structural excess capacities in some industries requires tailor-made responses at company level, ranging from engaging in new business models and products to definite market exit. Companies and social partners have the primary responsibility for restructuring to ensure their future competitiveness and viability, since experience has shown that competitive-driven structural adaptation is quickest and most efficient.

The Rescue and Restructuring aid guidelines allow for aid only if it results in restructuring capable of restoring the long-term viability of the beneficiaries without further support, ensures appropriate contribution of the beneficiary to the costs of restructuring, and is accompanied by measures to address the resulting competition distortion. Lessons learnt in the crisis will feed into the revision of the Rescue and Restructuring Aid Guidelines.

Member States also need to support reallocation of labour, within the framework of a flexicurity system. Better anticipating and managing restructuring would help employees and companies to adapt to transitions imposed by excess capacities as well as by modernisation and structural adjustment. Existing State aid rules offer Member States ample possibilities to use state aid to accompany change, e.g. through training or R&D&I aid, or support to risk capital. At the European level, the Regional and Cohesion Funds can stimulate investment and innovation to strengthen the resilience of local economies. The ERDF has increasingly focused on investments facilitating shifts up the value chain by both hi-tech and traditional sectors through investments in R&D, innovation and ICT, whilst the Cohesion Fund invests in particular in EU transport priorities which can improve physical accessibility as well as environmental infrastructure in the less-developed Member States. Such investments facilitate regions to develop their own innovation niches based on smart specialisation.

An expanded European Globalisation Adjustment Fund could also improve the ability of Member States and regions to manage the fall-out of the crisis and help provide retraining and other active labour market measures for redundant workers.

Management and workers' representatives are the key players to agree on restructuring strategies at the company level. Policy interventions should accompany such restructuring to avoid social hardship and promote new skills and jobs, thus avoiding mass layoffs and the decline of entire regions or the delocalisation of entire industries and facilitating economic reconversion and professional transitions. The ETUC, Business Europe, CEEP and UEAPME agreed on 'Orientations for reference in managing change and its social consequences' in 2003. These orientations need to be revisited to integrate knowledge subsequently accumulated on the best ways to anticipate and manage restructuring and to take into account the experience of the economic and financial crisis. Updated orientations on restructuring can be very useful in reinforcing the capacity of businesses and workforce to adapt to a fast-changing economic environment.

The Commission will:

- review Community support for re-integrating redundant workers into new jobs including through the review of the European Globalisation Adjustment Fund (EGAF) regulation (2011);
- launch a consultation of European social partners on a European framework for restructuring. (2011);
- review the Rescue and Restructuring Guidelines for State Aid (2012);
- support Member States and regions through Cohesion Policy in the diversification of existing industries, upgrading industrial capacity, stimulating investment and innovation to re-develop and strengthen the resilience of local economies;
- present proposals to accelerate the implementation and improve the focus of European Structural Funds through the Fifth Cohesion Report (2010) and in the new Cohesion policy regulatory framework (2011).

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
- Towards a Single Market Act For a highly competitive social market economy: 50 proposals for improving our work, business and exchanges with one another – COM(2010)608 final

Beyond purely reactive approaches to the economic and financial crisis, pre-emptive strategies have allowed businesses to ward off industrial disputes through the proactive and negotiated management of restructuring operations. This constitutes a precondition for economic success and is a social requirement, since it enables resources to be redistributed to emerging sectors and opens new windows of opportunity for workers when their jobs are at risk. A European framework for restructuring exercises would make for an environment based on mutual trust.

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
-An Agenda for new skills and jobs: A European contribution towards full employment – COM(2010)682 final

1.2. Priorities to enhance the implementation, monitoring and governance of flexicurity

European social partners supported the adoption of the Common Principles of flexicurity and have stressed the importance of an approach combining internal and external flexicurity. While in many countries social partners have been engaged in the implementation and monitoring of national flexicurity approaches, consultation and dialogue should be strengthened: flexicurity policies can only succeed if social partners take full ownership of labour market reforms.

As announced in the "Single Market Act" and the Flagship Initiative "Industrial Policy for the Globalisation Era", the Commission is consulting again the European social partners to develop an EU framework for restructuring with a view to encourage a shift from purely reactive actions to more anticipative strategies and ensure its full application. Anticipative strategies allow taking into account the needs arising from the transition to a low-carbon economy, and from sectors with structural excess capacities. They can also help avoid social conflict through the negotiated management of restructuring operations, for example by developing occupational training and economic reconversions.

3. Further reading

- Documents related to restructuring on DG EMPL's website
<http://ec.europa.eu/social/main.jsp?catId=782&langId=en&moreDocuments=yes>
- Communication from the Commission - Restructuring and employment - Anticipating and accompanying restructuring in order to develop employment: the role of the European Union – COM(2005)120 final
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0120:EN:NOT>
- GREEN PAPER Restructuring and anticipation of change: what lessons from recent experience? – COM(2012)7 final
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0007:FIN:EN:PDF>
- Summary of consultation responses to the Green paper on "Restructuring and anticipation of change: what lessons from recent experience?"
<http://ec.europa.eu/social/BlobServlet?docId=8908&langId=en>

HIGHLIGHTS

The consultation was successful in providing detailed information on a variety of existing measures and practices at different levels that allow for both a smoother adaptation to change of companies and workers and for minimising any negative impact of specific restructuring operations.

The main lessons from the crisis are that short-term working schemes play a useful role in emergency situations but that they are not adequate instruments to deal with the on-going challenges of structural change, which mostly appear to require favourable framework conditions across the board. Also, the positive role of the European Social Fund and the European Globalisation Fund was often underlined.

A very broad consensus exists on the crucial importance of anticipative and proactive stances, especially at company level, but also at regional and sectoral levels. A significant number of respondents highlighted existing good practices in this field and some considered that more needs to be done at all levels (companies, national and regional authorities and also at EU level) in order to promote such good practices.

Almost all the respondents highlighted the role of social dialogue and transparency in decision-making as a major factor for building trust and consensus amongst all the stake-holders, thereby facilitating change and making restructuring both more efficient from an economic view point and more accepted and responsible from a social viewpoint. Some respondents also stressed the existence of different traditions and models of social dialogue according to specific national and local circumstances.

Extended references were made to the essential nature of investing in human capital through training and skills enhancement as a permanent feature of working lives, in order to increase companies' competitiveness and the employability of workers.

Even if the central role of companies in anticipation and management of restructuring was widely acknowledged, many respondents pointed out the important part to be played by public authorities. The need to build on and improve existing partnerships between different stakeholders (including regional and local authorities) was stressed in many replies.

The Green paper did not ask stakeholders' views whether they believe any further EU-level initiative would be justified, still some of the social partners' organisations expressed diverging on this issue. However, European social partners from both sides agree that this subject is at the core of their competences.

- Checklist for Restructuring Processes
<http://ec.europa.eu/social/main.jsp?catId=782&langId=en>
- Toolkits for restructuring based on the innovative actions of European Social Fund Article 6 projects (2010)
<http://ec.europa.eu/social/BlobServlet?docId=4937&langId=en>
- Eurofound database:
<http://www.eurofound.europa.eu/emcc/erm/supportinstruments/>
<http://www.eurofound.europa.eu/publications/htmlfiles/ef1165.htm>

A. 9-1 Early school leaving⁶²

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>9. Investing in skills, education and lifelong learning (<i>Education target</i>)</p> <p>(referred to in Article 9(10))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - preventing and reducing early school-leaving <p>ERDF:</p> <ul style="list-style-type: none"> - investing in education, skills and lifelong learning by developing education and training infrastructure. 	<p>9.1. <i>Early school leaving</i>: The existence of a comprehensive strategy to reduce early school leaving (ESL) in accordance with the Council recommendation of 28 June 2011 on policies to reduce ESL within the limits of Article 165 TFEU</p>	<ul style="list-style-type: none"> - A system for collecting and analysing data and information on ESL at relevant levels is in place that: <ul style="list-style-type: none"> - provides a sufficient evidence-base to develop targeted policies and monitors developments. - A strategy on ESL is in place that: <ul style="list-style-type: none"> - is based on evidence; - covers relevant educational sectors, including early childhood development, and addresses prevention, intervention and compensation measures; - involves all policy sectors and stakeholders that are relevant to address ESL.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State invests in preventing and reducing early school leaving (as set out in column 2 of Annex V) under the following investment priorities:

- **ESF**: Reducing early school-leaving and promoting equal access to good-quality early-childhood, primary and secondary education (Art. 3(1)(b)(i) ESF Reg.)
- **ERDF**: investing in education, skills and lifelong learning by developing education and training infrastructure (Art. 5(10) ERDF Reg.).

It is therefore not necessary to assess the applicability of this *ex ante* conditionality in case Member States invest only in improving the quality of education (e.g. teacher training).

2. Definitions

A comprehensive strategy is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be

⁶² This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow). Moreover, the Commission suggests that this *ex ante* conditionality should also be applicable for ERDF investments.

established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, including mapping of the necessary infrastructure with a view to assuring its long-term optimisation and sustainability, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

In the case of early school leaving (ESL), the term 'comprehensive strategy' refers to the Council Recommendation on policies to reduce early school leaving⁶³ and its understanding of comprehensive and evidence-based policies to reduce ESL. In this context a strategy could also be an action plan, guidelines for the different policy levels implementing measures against ESL, or even parts of the national legislation on school education. Also a national programme which supports an evidence-based and comprehensive approach to tackle ESL can indicate a clearly defined policy to reduce ESL.

Depending on the institutional context of the Member State, the strategy on ESL can be national or regional. In case of a regional OP and regional competence on ESL, only the ESL strategy of the region will need to be assessed.

Based on evidence: This means that main characteristics of ESL processes in the country (at the relevant territorial level, i.e. national, regional and/or local/school level) are identified and proven by current data and information, taking into account demographic factors. The information is used as a basis for targeted policy development and the measures taken or described within the strategy are consistent with the specific situation within the country.

Covers relevant educational sectors: This means that, in general, measures address education levels ISCED0 to ISCED3⁶⁴, both general education and vocational education and training and include also special needs education or (if systems are inclusive) the needs of students with specific educational needs. However, in case evidence shows that there is no ESL problem in one or more of these sectors, they will not be considered as relevant sectors.

Early childhood education and care is conceived as an important measure to provide all children with a good start into education and is accessible especially for groups at increased risk of ESL (such as socio-economically disadvantaged groups, migrants, Roma). Measures should be in place to ensure high quality standards.

Prevention, intervention and compensation measures:

Preventative measures seek to tackle the problem even before the first symptoms of it are visible. They look at pre-conditions for successful schooling and the design of education and training systems. Potential obstacles to school success at system level are e.g. high retention rates, school segregation, limited access to high quality education for

⁶³ OJ C 191, 2011.

⁶⁴ ISCED 0: Early childhood education; ISCED 1: Primary education; ISCED 2: Lower secondary education; ISCED 3: Upper secondary education; ISCED 4: Post-secondary non-tertiary education; ISCED 5: Short-cycle tertiary education; ISCED 6: Bachelor's or equivalent level; ISCED 7: Master's or equivalent level; ISCED 8: Doctoral or equivalent level (see <http://www.uis.unesco.org/Education/Documents/isced-2011-en.pdf>)

disadvantaged groups or in disadvantaged areas, inflexibility of educational pathways, deficiencies in teacher education, lack of accessible good quality infrastructure.

Intervention aims to avoid ESL by providing targeted support to pupils or groups of pupils at risk. Measures shall support pupils at risk of ESL and are mainly implemented at school-level and especially in schools most affected by ESL. They should be accessible to all pupils concerned.

Compensation measures create opportunities for those who left education and training prematurely, but want to gain the qualifications they missed at a later stage in their life. The aim is also to reintegrate young adults by offering a range of tailor-made education and training opportunities (such as second chance schools) and providing targeted support if needed, including financial support, but also guidance and counselling.

Involves all policy sectors and stakeholders: This means that the strategy is coordinated across different policy sectors (e.g. social policy, employment, youth, and health) and involves different stakeholder such as parents, local communities, municipalities, employers, youth organisations.

A system to collect sufficient evidence: This is a system that provides sufficient information to understand ESL processes in the country (at national, regional and local level) and to develop targeted policies against ESL.

Currently most policies and measures against ESL lack evaluation and monitoring. Insufficient data collection is one of the reasons for that. Systems should allow for monitoring developments; aggregated data and information should preferably be publically available, easy to access and used for monitoring measures against ESL.

3. Source of information for assessment

- National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Country-specific Council recommendations
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- National Education and Training 2020 reports from 2011
http://ec.europa.eu/education/lifelong-learning-policy/progress-reports_en.htm
- Eurydice – country reports
https://webgate.ec.europa.eu/fpfis/mwikis/eurydice/index.php/Ongoing_Reforms_and_Policy_Developments

- Mapping of country practices in collecting data on early school leaving (will be published on website in Spring 2013)
- Results of the Peer Review on ESL in March 2013 (covering 8 countries)
- Member States' legislation and policy documents

4. Rationale for the *ex ante* conditionality

The success rates of Member States in reducing ESL are different also due to the way policies against ESL are conceptualized. Only few Member States follow a consistent and comprehensive strategy to reduce ESL. Many initiatives against ESL are not sufficiently linked to other policies addressing young people. There is also often a lack of sound analysis of the specific problems within a region or target group.

With regard to ESF co-financed measures in six Member States, the Special Report of the Court of Auditors from 2006 concluded that "ESF co-financed activities for ESL were initiated without adequate analysis of the existing situation and the expected or targeted result." The report also states that "activities did not form part of a strategic plan (...)" (OJ 2006/C99/3 and 7). The *ex ante* conditionality should ensure that initiatives are based on a sound analysis of the situation within the country or region and are part of a more strategic approach to fight ESL.

Quality education and training infrastructure needs to be in place and be appropriately geographically accessible in disadvantaged areas. The strategy should explain how infrastructure needs have been appraised and how this exercise has been translated into decisions mapping out the long-term infrastructure network, which will form the framework for co-financed investments. Considerations such as demographic and territorial factors should be taken into account. Such an approach is necessary in order to ensure that infrastructure investments are part of an integral strategy, thus avoiding the financing of piecemeal or obsolete investments.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A system for collecting and analysing data and information on ESL at relevant levels is in place</i></p> <ul style="list-style-type: none"> ▪ There is a clear systematic approach to collect and analyse data on ESL at the relevant territorial level. 		
<p>– <i>It provides a sufficient evidence-base to develop targeted policies and monitors developments</i></p> <ul style="list-style-type: none"> ▪ The system allows for an identification of the main causes triggering ESL, for an identification of the groups most affected by ESL, and for monitoring developments ▪ It is possible to have aggregated data at the school and relevant territorial levels; data are available at least on an annual basis. ▪ Data cover number, age, sex, socio-economic status, ethnicity (either of students or neighbourhood) of school drop-outs and early school leavers. Information on reasons for early school leaving is available. ▪ Data collection covers all types of education and training (e.g. general education, Vocational Education and Training, special needs education, private and public). 		
<p><i>A strategy on ESL is in place ...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the strategy or indicates where it or its different elements are published (in the form of a link). ▪ In case there is no strategy against ESL adopted or published, the self-assessment demonstrates the link between the elements at forming an equivalent to a strategy. 		
<p><i>...that</i></p>		
<p>– <i>is based on evidence</i></p> <ul style="list-style-type: none"> ▪ The main factors triggering ESL in the country (at the relevant territorial levels) are identified and proven by current data and information. ▪ The measures taken or described within the strategy are consistent with the specific situation within the country (at the relevant territorial levels) and target the groups at risk of early school leaving. 		

<ul style="list-style-type: none"> ▪ Infrastructure needs – taking into account demographic trends - to address ESL have been appraised and translated into a long-term strategy of the infrastructure network, where relevant, with a view to ensuring effectiveness and sustainability. 		
<p>– <i>covers relevant educational sectors, including early childhood development, and addresses prevention, intervention and compensation measures</i></p> <ul style="list-style-type: none"> ▪ Depending on the identified ESL problems, measures address: ▪ All relevant education levels up to ISCED3. ▪ Both general education and vocational education and training. ▪ Special needs education or (if systems are inclusive) the needs of students with specific educational needs. ▪ Prevention: Early childhood education and care (ECEC) is accessible and there are measures to ensure good quality. Especially groups at increased risk of ESL have access to good quality ECEC. ▪ Prevention: Potential obstacles to school success at system level (e.g. inflexible learning pathways, deficiencies in teacher education, high retention rates, segregation and limited access to high quality education for disadvantaged groups or in disadvantaged areas, lack of accessible good quality infrastructure, etc.) are identified; mid-term or long-term solutions are under development or at implementation stage. The measures have the potential to remove the described obstacles. ▪ Intervention: Targeted measures to support pupils at risk of ESL are implemented at school-level and especially in schools most affected by it. ▪ Intervention: Measures to support individual pupils at risk of ESL are accessible to all pupils concerned and especially to groups most affected by it. ▪ Intervention: In case of need, measures involve also actors outside school such as social and youth services, local community or other education and training providers. ▪ Intervention: Infrastructure measures to ensure that identified ESL problems can be effectively addressed, including in disadvantaged areas. ▪ Compensation: Young people who dropped out of education and training are offered a range of tailor-made education and training opportunities to return to mainstream education or to acquire relevant qualifications within alternative settings . ▪ Compensation: Young people receive additional targeted support if needed, including financial support, but also guidance and counselling. 		
<p>– <i>involves all policy sectors and stakeholders that are relevant to address ESL</i></p>		

<ul style="list-style-type: none">▪ The strategy is coordinated across different policy sectors▪ Measures supporting the reduction of early school leaving are integrated into all relevant policies aimed at children and young people (such as social policy and support services, employment, youth, family, and integration policies.)▪ There is both a horizontal coordination between different actors at relevant territorial levels and vertical coordination through different levels of government.		
---	--	--

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Council Recommendation of 28 June 2011 on policies to reduce early school leaving (OJ C 191 of 1.7.2011, p. 1)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:191:0001:0006:EN:PDF>

2. Extract of relevant documents

- **Council Recommendation of 28 June 2011 on policies to reduce early school leaving**

“HEREBY RECOMMENDS THAT MEMBER STATES:

Make use of the framework set out in the Annex to this Recommendation, according to national circumstances, in order to:

1. Identify the main factors leading to early school leaving and monitor the characteristics of the phenomenon at national, regional and local level as the foundation for targeted and effective evidence-based policies.
2. Ensure that comprehensive strategies on early school leaving are in place by the end of 2012, and that they are implemented in line with national priorities and the Europe 2020 objectives. Comprehensive strategies are taken to include prevention measures, intervention measures and compensation measures, the latter being aimed at re-engaging people who have dropped out of education.
3. Ensure that those strategies include appropriate measures for groups at increased risk of early school leaving in the Member State, such as children with a socio-economically disadvantaged, migrant or Roma background, or with special educational needs.
4. Ensure that those strategies address in a coherent manner both general education and vocational education and training, and the challenges specific to each.
5. Integrate measures which support the reduction of early school leaving rates in relevant policies targeted at children and young people, and coordinate activities among different policy sectors

- **Council Recommendation of 28 June 2011 on policies to reduce early school leaving, Annex**

“Strategies on early school leaving should be based on an analysis at national, regional and local level of the conditions leading to the phenomenon, as average rates often mask large differences between different regions or countries. Early school leavers are a heterogeneous group and individual motivations to leave education prematurely differ widely. Family background and wider socio-economic conditions such as pull from the labour market are important factors. Their impact is conditioned by the structure of the education and training system, by available learning opportunities, and by the learning environment. The coordination of policies addressing the well-being of children and young people, social security, youth employment and future career perspectives has an important role to play in reducing early school leaving. (...)

Comprehensive strategies on early school leaving comprise a mix of policies, coordination across different policy sectors and the integration of measures supporting the reduction of early school leaving into all relevant policies aimed at children and young people. In addition to education policies that promote high-

quality school systems, these are principally social policy and support services, employment, youth, family, and integration policies. Horizontal coordination between different actors and vertical coordination through different levels of government are equally important. Strategies on early school leaving should comprise prevention, intervention and compensation elements. Member States should select the detailed components of their strategies according to their own circumstances and contexts.”

3. Further reading

- Commission Staff Working Paper on "Reducing early school leaving " (SEC(2011)96), 26 January 2011

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0096:FIN:EN:PDF>

http://ec.europa.eu/education/school-education/leaving_en.htm

DRAFT

DRAFT

A.9-2 Higher education⁶⁵

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>9. Investing in skills, education and lifelong learning (Education target) (referred to in Article 9(10))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Improving the quality, efficiency and openness of tertiary and equivalent education with a view to increasing participation and attainment levels <p>ERDF:</p> <ul style="list-style-type: none"> - investing in education, skills and lifelong learning by developing education and training infrastructure. 	<p>9.2. <i>Higher education:</i> The existence of a national or regional strategic policy framework for increasing tertiary education attainment, quality and efficiency within the limits of Article 165 TFEU.</p>	<p>A national or regional strategic policy framework for tertiary education is in place with the following elements:</p> <ul style="list-style-type: none"> - where necessary, measures to increase participation and attainment that: <ul style="list-style-type: none"> - increase higher education participation among low income groups and other under-represented groups; - increase participation by adult learners; - reduce drop-out rates/improve completion rates. - measures to increase quality that: <ul style="list-style-type: none"> - encourage innovative content and programme design; - measures to increase employability and entrepreneurship that: <ul style="list-style-type: none"> - encourage the development of "transversal skills", including entrepreneurship in relevant higher education programmes; - reduce gender differences in terms of academic and vocational choices.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State invests in higher education under the following investment priorities:

- **ESF:** Improving the quality, efficiency and openness of tertiary and equivalent education (Art. 3(1)(b)(ii) ESF Reg.).

⁶⁵ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

- **ERDF**: investing in education, skills and lifelong learning by developing education and training infrastructure (Art. 5(10) ERDF Reg.)

2. Definitions

A Strategic Policy Framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, including mapping of the necessary infrastructure with a view to ensuring its long-term optimisation and sustainability, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

In the case of higher education a strategy is typically a White Paper, Government Strategy, Higher Education Law or combination of these, which sets out overall priorities for development of the national (regional) higher education system and measures to achieve these priorities.

Attainment: Successful completion of a higher education or equivalent qualification.

Under-represented groups: Sections of society which are proportionally under-represented in higher education in comparison to their representation in the national population.

Drop-out rate: The proportion of those enrolling in higher education programmes failing to graduate with a higher education qualification within a specified timeframe (national definitions vary).

"Transversal skills": Skills and attitudes necessary for personal development, employment and active citizenship, which can be equated broadly to the concept of "Generic skills" used by the OECD's AHELO feasibility project on testing higher education learning outcomes. Key examples of such skills are critical thinking, analytical reasoning, problem-solving, and written and verbal communication. The Council Conclusions on the modernisation of higher education systems (see below) refer specifically to promoting "entrepreneurial, creative and innovation skills".

3. Source of information for assessment

- National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes

http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- Country-specific Council recommendations
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

- National Education & Training 2020 reports from 2011
http://ec.europa.eu/education/lifelong-learning-policy/progress-reports_en.htm

Evidence from the above sources is generally adequate to assess national approaches to participation and attainment in higher education. Information on initiatives and strategies to promote employability and entrepreneurship is not collated in a single EU source at present. As such, national strategy documents (see definition above) will be referred to identify the extent to which such issues are covered.

4. Rationale for the *ex ante* conditionality

The investment priority on higher education reflects the core goals of the EU's modernisation agenda for higher education: to increase graduation rates (in line with the Europe 2020 40% headline target) and to improve the quality and relevance of higher education provision⁶⁶. The basic requirement reflected in the *ex ante* conditionality is for national or regional authorities in the Member State concerned to have made an assessment of the challenges faced in higher education attainment and quality and relevance (employability and entrepreneurship) and to have formulated a coherent strategy for public support to address these issues. Such a strategic approach is essential to ensuring the efficiency of individual measures and public investments in the field of higher education, allowing them to be better targeted to contribute more effectively to the broader goals of improving graduation rates and enhancing the quality and relevance of provision.

The strategy should also explain how infrastructure needs have been appraised and how this exercise has been translated into decisions concerning the long-term development of national or regional higher education infrastructure. Considerations such as demographic and territorial factors should be taken into account. Such an approach is necessary in order to ensure that infrastructure investments are part of an integral strategy, thus avoiding the financing of piecemeal or obsolete investments.

As indicated in the phrasing of the *ex ante* conditionality, not all systems face major challenges in terms of higher education participation rates and drop-out. However, in most, if not all, Member States, individuals from families with below average income tend to participate less frequently in higher education than their peers from wealthier backgrounds (they are under-represented in the student cohort compared to the population at large). Measures to increase participation from such groups may include, among others, schemes to improve attainment at secondary school level, guidance and counselling and targeted financial support. Bringing adult learners (e.g. those older than 25) into higher education is an important part of up-skilling the labour force and reaching national Higher Education attainment targets. Typically, attracting those already in the

⁶⁶ The modernisation agenda also focuses on internationalisation, development of innovation and funding and governance, which are not directly covered by the final *ex ante* conditionality criteria.

labour market (and/or with family commitments) into higher education, involves developing more flexible provision, including part-time study and distance learning options (often exploiting ICT).

Actions to reduce the proportion of students not completing the study programmes they begin successfully can include: improved guidance and counselling for applicants to improve course choice, more systematic entry conditions and better guidance and counselling for students experiencing difficulties. Financial difficulties can also be a significant factor in drop-out.

Given the broad autonomy enjoyed by higher education institutions, direct public policy intervention aimed at improving the quality and relevance of higher education provision in institutions is comparatively rare. Rather, the role of public policy (and thus any strategy for the sector) tends to focus on incentivising higher education institutions to focus on improving quality and relevance, for example through pilot or cooperative projects involving different stakeholders. Such actions can focus on developing new curricula, with increased emphasis student-centred learning and developing generic skills. Practical elements, problem-based learning, group exercises, work placements and/or inbuilt mobility periods are programme features seen to foster development of transversal skills.

The reference to reducing "gender differences in terms of academic and vocational choices" has been included to cover the issue of gender imbalance in certain academic subjects which then lead to gender imbalances in corresponding segments of the labour market. In some countries, this may include the under-representation of women in the natural sciences, engineering and IT (high growth, high skill segments of the economy) and the under-representation of men in subjects such as teacher training (leading to gender imbalances in the supply of teachers).

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national or regional⁶⁷ strategic policy framework for tertiary education is in place...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the framework and indicates where it or its different elements are published (in the form of a link) 		
<i>...with the following elements:</i>		
<p>– <i>where necessary, measures to increase participation and attainment that: increase higher education participation among low income groups and other under-represented groups</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of current participation levels in higher education by socio-economic group and/or other societal grouping. ▪ There are measures for tackling the under-representation emerging from the analysis of current participation⁶⁸. ▪ Relevant infrastructure is available or infrastructure investments are foreseen to tackle this issue. 		
<p>– <i>where necessary, measures to increase participation and attainment that: increase participation by adult learners</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of current levels of HE participation and attainment among adult learners and of the rationale for increasing participation as part of a broader human capital development strategy. ▪ There are measures for increasing participation of adult learners in higher education⁶⁹. ▪ Relevant infrastructure is available or infrastructure investments are foreseen to tackle this issue. 		

⁶⁷ Typically this will be a national strategy, except in countries where competence for higher education lies primarily or entirely with regional governments, e.g. Germany, Belgium etc.

⁶⁸ See section 4 above for examples of possible "measures".

⁶⁹ See section 4 above for examples of possible "measures".

<p>– <i>where necessary, measures to increase participation and attainment that: reduce drop-out rates/improve completion rates</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of current levels of drop-out/non-completion in higher education. ▪ Where drop-out rates have been identified as a problem, there are measures to address this problem⁷⁰. 		
<p>– <i>measures to increase quality that: encourage innovative content and programme design</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of the strengths and weaknesses of existing course provision and an identification of areas where further progress is needed to increase quality, student-centred provision. ▪ There are measures for encouraging higher education institutions to implement student-centred learning and exploit the full potential of ICT in teaching and learning. 		
<p>– <i>measures to increase employability and entrepreneurship that: encourage the development of "transversal skills", including entrepreneurship in relevant higher education programmes</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of the extent to which higher education programmes currently help students to develop employment-relevant "transversal" skills, including entrepreneurial skills. ▪ There are measures to encourage higher education institutions to promote development of such skills through their programmes. 		
<p>– <i>measures to increase employability and entrepreneurship that: reduce gender differences in terms of academic and vocational choices</i></p> <ul style="list-style-type: none"> ▪ There is an analysis of the current gender balance in higher education, disaggregated to (at least) the level of major disciplines. ▪ There are measures to address gender imbalances which have been identified as problematic. 		

⁷⁰ See section 4 above for examples of possible "measures".

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Council conclusions on the modernisation of higher education (2011/C 372/09)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:372:0036:0041:EN:PDF>

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions supporting growth and jobs – an agenda for the modernisation of Europe's higher education systems (COM(2011) 567 final)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0567:FIN:EN:PDF>

2. Extract of relevant documents

- **Council conclusions on the modernisation of higher education (2011/C 372/09)**

THE COUNCIL OF THE EUROPEAN UNION,

ACCORDINGLY INVITES THE MEMBER STATES — IN LINE WITH NATIONAL PRACTICE — TO WORK WITH HIGHER EDUCATION INSTITUTIONS, WHILE RECOGNISING THEIR AUTONOMY, AS WELL AS WITH ALL RELEVANT STAKEHOLDERS, IN ORDER TO:

1. Step up efforts to increase higher education attainment levels to achieve the Europe 2020 education headline target of 40 % of 30-34 year olds in the EU having completed tertiary or equivalent education, given the estimate that — by 2020 — 35 % of all jobs in the EU will require high-level qualifications.
2. Develop clear progression routes into higher education from vocational and other types of education, as well as mechanisms for recognising prior learning and experience gained outside formal education and training, especially by tackling challenges related to the implementation and use of national qualification frameworks linked to the European Qualification Framework.
3. Promote the systematic development of effective strategies to ensure access for disadvantaged and under-represented groups, especially by improving outreach and by providing more transparent information on educational opportunities and outcomes, as well as better guidance in order to ensure the right choice of study.
4. Increase efforts to minimise higher education drop-out rates by improving the quality, relevance and attractiveness of courses, in particular through student-centred learning and by providing relevant post-entry support, guidance and counselling.
5. Ensure that targeted financial support reaches potential students from lower income backgrounds.
[...]
9. Tackle stereotyping and dismantle the barriers still faced by women in reaching the highest levels in post-graduate education and research — especially in certain disciplines and in leadership positions — in order to liberate untapped talent.
[...]

11. Stimulate the development of entrepreneurial, creative and innovation skills in all disciplines and in all cycles, and promote innovation in higher education through more interactive learning environments and a strengthened knowledge-transfer infrastructure.

[...]

15. Strengthen links between higher education institutions, employers and labour market institutions in order to take greater account of labour market needs in study programmes, to improve the match between skills and jobs, and to develop active labour market policies aimed at promoting graduate employment.

- **COM(2011) 567 final: An agenda for the modernisation of Europe's higher education systems**

P.4 Key policy issues for Member States and higher education institutions:

- Develop clear progression routes from vocational and other education types into higher education. An effective way to achieve this is through national qualification frameworks linked to the European Qualifications Framework and based on learning outcomes, and through clear procedures for recognising learning and experience gained outside formal education and training.
- Encourage outreach to school students from underrepresented groups and to 'non-traditional' learners, including adults; provide more transparent information on educational opportunities and outcomes, and tailored guidance to inform study choices and reduce drop-out.
- Ensure that financial support reaches potential students from lower income backgrounds through a better targeting of resources.
- Design and implement national strategies to train and re-train enough researchers in line with the Union's R&D targets.

p.5 Key policy issues for Member States and higher education institutions:

- Encourage the use of skills and growth projections and graduate employment data (including tracking graduate employment outcomes) in course design, delivery and evaluation, adapting quality assurance and funding mechanisms to reward success in equipping students for the labour market.
- Encourage a greater variety of study modes (e.g. part-time, distance and modular learning, continuing education for adult returners and others already in the labour market), by adapting funding mechanisms where necessary.
- Better exploit the potential of ICTs to enable more effective and personalised learning experiences, teaching and research methods (e.g. eLearning and blended learning) and increase the use of virtual learning platforms.
- Enhance the capacity of labour market institutions (including public employment services) and regulations to match skills and jobs, and develop active labour market policies to promote graduate employment and enhance career guidance.
- Introduce incentives for higher education institutions to invest in continuous professional development for their staff, recruit sufficient staff to develop emerging disciplines and reward excellence in teaching.
- Link funding for doctoral programmes to the Principles for Innovative Doctoral Training.

3. Further reading

- The European Higher Education Area in 2012: Bologna Process Implementation Report

http://eacea.ec.europa.eu/education/eurydice/documents/thematic_reports/138EN.pdf

- Commission Staff Working Document on recent developments in European higher education systems (2011)

http://ec.europa.eu/education/higher-education/doc/wp0911_en.pdf

A.9-3 Lifelong learning⁷¹

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>9. Investing in skills, education and lifelong learning (<i>Education target</i>)</p> <p>(referred to in Article 9(10))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Enhancing access to lifelong learning, upgrading the skills and competences of the workforce <p>ERDF: investing in education, skills and lifelong learning by developing education and training infrastructure</p>	<p>9.3. <i>Lifelong learning</i>: The existence of a national and/or regional strategic policy framework for lifelong learning within the limits of Article 165 TFEU.</p>	<p>A national or regional strategic policy framework for lifelong learning is in place that contains:</p> <ul style="list-style-type: none"> - measures to support lifelong learning (LLL) implementation and skills upgrading and providing for the involvement of, and partnership with relevant stakeholders; - measures for the provision of skills development corresponding to the needs of various target groups where these are identified as priorities in national or regional strategic policy frameworks (for example young people in vocational training, adults, parents returning in the labour market, low skilled and older workers, migrants and other disadvantaged groups); - measures to widen access to LLL including through [...] implementation of transparency tools (in particular the European Qualifications Framework, National Qualifications Framework, European Credit system for Vocational Education and Training, European Quality Assurance in Vocational Education and Training) and the development and integration of lifelong learning services (education and training, guidance, validation).

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State supports lifelong learning under the following investment priorities:

- **ESF**: Enhancing access to lifelong learning, upgrading the skills and competences of the workforce and increasing the labour market relevance of education and training systems (Art. 3(1)(b)(iii) ESF Reg.).
- **ERDF**: investing in education, skills and lifelong learning by developing education and training infrastructure (Art. 5(10) ERDF Reg.)

⁷¹ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

2. Definitions

Lifelong learning (LLL) as defined by the EU means all general education, vocational education and training, non-formal education and informal learning⁷² undertaken throughout life, resulting in an improvement in knowledge, skills and competences within a personal, civic, social and/or employment-related perspective. In the context of the European Structural and Investment Funds 2014-2020 the *focus is on post-compulsory* education and LLL is mainly understood as a continuous process of flexible learning opportunities, linking learning and competences acquired in formal institutions with skills development in non-formal and informal contexts, notably the workplace. At EU level LLL implementation is measured by the indicator "Participation of 25-64 years old in lifelong learning".

A strategic policy framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, based on assessment of future skills needs, employability of workers, obstacles to participation, identification of priority target groups etc. It includes allocation of resources, concrete measures to achieve these, including mapping of the necessary infrastructure with a view to insuring its long-term optimisation and sustainability, and monitoring and evaluation instruments to assess progress of implementation (including assessment of effectiveness of training, etc.).

Widening access to LLL refers to measures that facilitate participation in learning activities for people who are generally underrepresented (older workers, low-skilled people, socio-economically disadvantaged groups, etc.). Measures can include incentives for companies and for institutions to offer learning for target groups, work-based professional training, higher education programmes for adult learners, etc.

Lifelong learning services refers to learning related services that facilitate life-long learning, Lifelong learning services do not only include specific learning and skills upgrading programmes, but also validation of non-formally and in-formally acquired competences and quality learning and career guidance, tailored to individual needs.

Transparency tools refers to the EU agreed mechanisms and frameworks which aim to increase the quality, transparency and connectivity of acquired qualifications and support the flexibility of education and training systems, including pathways between different sub-systems such as Vocational Education and Training (VET) and higher education. These tools (in particular the *European Qualifications Framework, National Qualifications Framework, European Credit system for Vocational Education and Training, European Quality Assurance in Vocational Education and Training,*

⁷² Eurostat defines *formal education* as education provided in the system of schools, colleges, universities and other formal educational institutions that normally constitutes a continuous "ladder" of full-time education for children and young people, generally beginning at the age of five to seven and continuing to up to 20 or 25 years old. *Non-formal* learning are defined as any organised and sustained learning activities that do not correspond to the definition of formal education which may or may not take place in educational institutions and cater to persons of all ages. *Informal learning* corresponds to self-learning (through the use of printed material, computer-based learning/training, (Internet) web-based education, visiting libraries, etc.).

Recommendation on the validation of non-formal and informal learning) aim to connect lifelong learning across different contexts (school, work-place, voluntary work, etc.).

Involvement of relevant stakeholders means cooperation between governmental (e.g. ministries/public services for education, employment, youth, etc.) and private actors (social partners, employers, NGOs, education providers, etc.).

Partnership means cooperation between public services, education and training providers and employers to effectively identify training needs, improve the relevance of education and training, and facilitate individuals' access to further education and training⁷³.

Under-represented groups means sections of society which are proportionally under-represented in learning activities in comparison to their representation in the national population.

Measures to assure that provision of LLL is targeted to priority groups may include incentives (including financial) and services to reach and support target groups, awareness raising and outreach activities, including cooperation with employers and NGOs to reach people in their work place and social environment, training for low-skilled elder people to retain employability, work place learning for young drop-outs, long-term unemployed, etc., modularisation of VET programmes, offers for people in full-employment, etc.

Adapting programmes for skills development to the needs of identified priority groups can for example be achieved by specific timing arrangements, teaching methods taking into account the cultural/language context of migrants, etc.

3. Source of information for assessment

- National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Country-specific Council recommendations
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- National Education and Training 2020 reports
http://ec.europa.eu/education/lifelong-learning-policy/progress-reports_en.htm

⁷³ See Agenda for New Skills and Jobs, COM(2010)682 final
197/300

4. Rationale for the *ex ante* conditionality

Supporting lifelong learning reflects one of the core goals of the Strategic Framework for European Cooperation in Education and Training (ET2020), *making Lifelong Learning a reality*, which is also an important element of Europe 2020, as expressed in the guidelines for employment policies of the Member States⁷⁴. The following key requirements have been identified for effective use of funding and implementation of LLL policies.

The basic requirement reflected in the *ex ante* conditionality is for national or regional authorities in the Member State concerned to have made thorough assessment of future challenges related to reskilling and up-skilling of the adult population and to the provision of more access to quality LLL.

The identified challenges should be translated into concrete measures and policy objectives, laid down in a coherent strategic framework and endorsed by all stakeholders (public and private, notably the social partners) who share the responsibility for implementation. Commitment and sharing of responsibility between relevant stakeholders is crucial for the implementation of such cross-sectoral policies such as LLL.

The strategic framework should explain how infrastructure needs have been appraised and how this exercise has been translated into decisions mapping out the long-term infrastructure network, which will form the framework for co-financed investments. Considerations such as demographic and territorial factors should be taken into account. Such an approach is necessary in order to ensure that infrastructure investments are part of an integral strategy, thus avoiding the financing of piecemeal or obsolete investments.

Cooperation and partnership between LLL stakeholders is a key condition for ensuring the relevance of learning for the labour market and for enhancing employability, as well as for making important synergies in resource use (including funding).

Effective provision of relevant LLL requires continuous monitoring of implementation, mechanisms for assessment of future skills needs and potential mismatches and for adapting learning programmes accordingly.

While features and size of potential target groups of LLL policies may vary across Member States (migrants, youth neither in employment nor education & training (NEETs), older workers, women, Roma population, etc.) as a general pattern those adults with the lowest level of previous education and training show also the lowest participation rates in LLL. In other terms, those who are relatively well educated and more able to contribute to the cost of training do in general benefit more often from state funded LLL and thus reducing funding efficiency. Thus, public funding for LLL should focus on under-represented groups who require re- or up-skilling to enhance employability and include incentives for institutions and companies to provide learning. Effective outreach to target groups can require campaigns to raise awareness on the benefits of LLL and in cooperation with NGOs or voluntary organisations.

⁷⁴ Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States (2010/707/EU).

To increase effective participation in delivery of LLL programmes should be adapted to the life situations of learners. According to the Adult Education Survey 2007 time constraints due to family obligations and conflicts with work schedules are the main obstacle to participation. Adapted modes of LLL provision such as in the work-place or via ICT, etc. can increase participation. Also the socio-cultural background may require differentiated modes of delivery, e.g. in foreign languages, etc.

Potential efficiency gains are expected to be also achieved by implementation of competence based approaches which facilitate access to LLL and progression between different pathways and programmes by avoiding that already acquired competences have to be re-learned unnecessarily. For this it is crucial to establish systems for the validation of non-formal and informal learning, effective guidance, and to implement the EU agreed transparency tools (see section 2 above).

Finally, synergies in resource use and effectiveness gains should be achieved by better linking different LLL services (validation, guidance, training), diminishing red-tape for individuals (e.g. "one-stop-shop" approach that gives access to validation, guidance and tailor made learning programmes; etc.) and by tailoring learning to individual needs, based on previous assessment and validation of competences.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national or regional strategic policy framework for lifelong learning is in place...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the framework and indicates where it or its different elements are published (in the form of a link). 		
<p><i>...that contains:</i></p>		
<p>– <i>Measures to support lifelong learning (LLL) implementation and skills upgrading and providing for the involvement of, and partnership with relevant stakeholders</i></p> <ul style="list-style-type: none"> ▪ Measures to support lifelong learning (LLL) implementation and skills upgrading are in place, including any necessary infrastructure investments based on needs analysis. ▪ A system for data collection, monitoring and evaluation is in place to allow for identification of LLL needs and assessment of the labour market relevance of LLL measures. ▪ There are arrangements to promote partnership and the involvement of relevant stakeholders, in particular the social partners, notably in the planning and implementation of LLL measures, in skills needs forecasting, adaptation of curricula to increase relevance, awareness raising on benefits of LLL and facilitating individuals' access to further education and training. 		
<p>– <i>Measures for the provision of skills development corresponding to the needs of various target groups where these are identified as priorities in national or regional strategic policy frameworks (for example young people in vocational training, adults, parents returning in the labour market, low skilled and older workers, migrants and other disadvantaged groups)</i></p> <ul style="list-style-type: none"> ▪ In case target groups are identified as priorities, there are measures to assure that provision of LLL is targeted to priority groups⁷⁵. ▪ In case target groups are identified as priorities, programmes for skills development are adapted to the needs of identified priority groups⁷⁶. 		

⁷⁵ See section 2 for examples.

⁷⁶ See section 2 for examples.

<p>– <i>Measures to widen access to LLL including through implementation of transparency tools (in particular the European Qualifications Framework, National Qualifications Framework, European Credit system for Vocational Education and Training, European Quality Assurance in Vocational Education and Training) and the development and integration of lifelong learning services (education and training, guidance, validation)</i></p> <ul style="list-style-type: none"> ▪ There are measures to better connect and value learning acquired in different tracks (e.g. Vocational Education and Training and higher education) and settings (formal, non-formal, informal learning) and to improve guidance. ▪ There are measures to open up learning institutions to under-represented groups. ▪ There are measures to implement the European Qualifications Framework Recommendation and a National Qualifications Framework, the European Credit system for Vocational Education and Training, the European Quality Assurance in Vocational Education and Training, the Recommendation on validation of non-formal and informal learning ▪ There are measures to integrate different LLL services. 		
--	--	--

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Council conclusions of 12 May 2009 on a Strategic Framework for European cooperation in education and training ("ET 2020") (OJ C 119, 28.5.2009, p.2)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:119:0002:0010:EN:PDF>

- Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States (2010/707/EU)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF>

- Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>

2. Extract of relevant documents

- Council conclusions of 12 May 2009 on a Strategic Framework for European cooperation in education and training ("ET 2020")

Strategic objective 1: Making lifelong learning and mobility a reality

The challenges posed by demographic change and the regular need to update and develop skills in line with changing economic and social circumstances call for a lifelong approach to learning and for education and training systems which are more responsive to change and more open to the wider world. While new initiatives in the field of lifelong learning may be developed to reflect future challenges, further progress with on-going initiatives is still required, especially in implementing coherent and comprehensive lifelong learning strategies. In particular, work is needed to ensure the development of national qualifications frameworks based on relevant learning outcomes and their link to the European Qualifications Framework, the establishment of more flexible learning pathways — including better transitions between the various education and training sectors, greater openness towards non-formal and informal learning, and increased transparency and recognition of learning outcomes. Further efforts are also required to promote adult learning, to increase the quality of guidance systems, and to make learning more attractive in general — including through the development of new forms of learning and the use of new teaching and learning technologies.

- Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States (2010/707/EU).

Guideline 8: Developing a skilled workforce responding to labour market needs and promoting lifelong learning

Member States should promote productivity and employability through an adequate supply of knowledge and skills to match current and future demand in the labour market. Quality initial education and attractive vocational training must be complemented with effective incentives for lifelong learning for those who are in and those who are not in employment, thus ensuring every adult the chance to retrain or to move one step up in their qualification and overcome gender stereotypes, as well as by opportunities for second-chance learning and by targeted migration and integration policies. Member States should develop systems for recognising acquired competencies, and should remove barriers to occupational and geographical mobility of workers, promote the acquisition of transversal competences to support creativity, innovation and entrepreneurship. In particular, efforts should focus on supporting those with low and obsolete skills, increasing the employability of older workers, enhancing training, skills and experience of highly skilled workers, including researchers and women in scientific, mathematical and technological fields.

In cooperation with social partners and firms, Member States should improve access to training, strengthen education and career guidance. These improvements should be combined with the provision of systematic information on new job openings and opportunities, the promotion of entrepreneurship and enhanced anticipation of skill needs. Investment in human resource development, up-skilling and participation in lifelong learning schemes should be promoted through joint financial contributions from governments, individuals and employers. To support young people and in particular those not in employment, education or training, Member States, in cooperation with the social partners, should enact schemes to help those people find initial employment, job experience, or further education and training opportunities, including apprenticeships, and should intervene rapidly when young people become unemployed.

3. Further reading

- Commission Communication 'Rethinking Education: Investing in skills for better socio-economic outcomes' (COM(2012) 669 final)
http://ec.europa.eu/education/news/rethinking/com669_en.pdf
- Commission Staff Working Document 'Partnership and flexible pathways for lifelong skills development' (SWD(2012) 376 final)
http://ec.europa.eu/education/news/rethinking/sw376_en.pdf
- Commission Staff Working Document accompanying the Communication 'Rethinking Education' – 'Country Analysis' (SWD(2012) 377 final)
http://ec.europa.eu/education/news/rethinking/sw377_en.pdf
- 2012 Joint Progress of the Council and the Commission on the implementation of the Strategic Framework ET2020
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:070:0009:0018:EN:PDF>
- Commission SWD 'Analysis of the implementation of the strategic framework for European cooperation in education and training (ET2020) - Country analysis' (SEC(2011) 1608 final)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1608:FIN:EN:PDF>

DRAFT

A.10-1 Active inclusion⁷⁷

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>10. Promoting social inclusion and combating poverty (<i>poverty target</i>)</p> <p>(referred to in Article 9(9))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Active inclusion with a view to improving employment opportunities <p>ERDF:</p> <ul style="list-style-type: none"> - investing in health and social infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status, and transition from institutional to community-based services - support for physical and economic regeneration of deprived urban and rural communities 	<p>10.1. The existence and the implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of people excluded from the labour market in the light of the Employment guidelines.</p>	<ul style="list-style-type: none"> - A national strategic policy framework for poverty reduction, aiming at active inclusion, is in place that: <ul style="list-style-type: none"> - provides a sufficient evidence base to develop policies for poverty reduction and monitor developments; - is in accordance with the national poverty and social exclusion target (as defined in the National Reform Programme), which includes the extension of employment opportunities for disadvantaged groups; - includes measures for the shift from institutional to community based care; - involves relevant stakeholders in combating poverty; - Upon request and where necessary relevant stakeholders can be provided with support for submitting project applications and for implementing and managing the selected projects.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State selects the following investment priorities:

- **ESF:** Active inclusion (Art. 3(1)(c)(i) ESF Reg.)
- **ERDF:**
 - investing in health and social infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status, and transition from institutional to community-based services (Art. 5(9)(a) ERDF Reg.)
 - support for physical and economic regeneration of deprived urban and rural communities (Art. 5(9)(b) ERDF Reg.)

⁷⁷ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow). Moreover, the Commission suggests that this *ex ante* conditionality should be also applicable for ERDF investments.

2. Definitions

A strategic policy framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. It sets out the scope, timeframe, concrete and comprehensive objectives, allocation of resources, measures to achieve these, including any necessary infrastructure investments, and monitoring and evaluation instruments to assess progress of implementation.

In the case of poverty reduction a national strategic policy framework for poverty reduction has the main characteristics of the comprehensive and integrated active inclusion strategy described in the 2008 Recommendation on active inclusion. A fully comprehensive policy design defines the right mix of the three strands (*adequate income support, labour market activation, and access to enabling services*) of the active inclusion strategy, taking account their joint impact on the social and economic integration of disadvantaged people and their possible interrelationships, including synergies and trade-offs. An integrated approach refers to the joint implementation (and delivery) of the three strands preferably in the form of single-access points. A national strategic policy framework should also address the vertical coordination of policies among local, regional, and national governments.

Sufficient evidence base means the state of active inclusion strategy in the respective Member State based on indicators on active inclusion⁷⁸. The indicators have to look at areas such as adequacy and coverage of adequate income support, jobless households, in-work poverty, financial disincentives, as well as, access to education (for the low skilled adults), healthcare, and housing. There has to be evidence of integrated service delivery (e.g. "one-stop-shops") or credible plans on the implementation of integrated approach.

An institution is a residential care where:

- residents are isolated from the broader community and/or compelled to live together;
- residents do not have sufficient control over their lives and over decisions which affect them;
- the requirements of the organisation itself tend to take precedence over the residents' individualised needs.

Community based services: This term refers to the spectrum of services that enable individuals to live in the community and, in the case of children, to grow up in a family environment as opposed to institutions. It encompasses mainstream services such as housing, healthcare, education, employment, culture and leisure, which should be accessible to everyone regardless of the nature of their impairment or the required level of support. It also refers to specialised services, such as personal assistance for persons with disabilities.

In addition, the term includes family-based and family-like care for children, including substitute family care and preventive measures for early intervention and family support.

⁷⁸ See the *Foundations and structures for a Joint Assessment Framework (JAF), including an Employment Performance Monitor (EPM) to monitor the Employment Guidelines under Europe 2020*.

Deinstitutionalisation: It refers to the process of developing a range of services in the community, including prevention, in order to eliminate the need of institutional care.

Measures for the transition from institutional to community based care:

These measures include the development of services based in the community enabling people to live independently and preventing the need of institutionalisation. In the case of children in alternative care, the provision of family-based or family-like care which include family support should be in place.

Relevant stakeholders: It refers to active participation of all relevant actors, including those affected by poverty and social exclusion, the social partners, non-governmental organisations and service providers, in the development, implementation and evaluation of strategies.

3. Source of information for assessment

- European Commission Staff Working Document: Follow-up on the implementation by the Member States of the 2008 European Commission recommendation on active inclusion of people excluded from the labour market – Towards a social investment approach (SWD(2013)39 of 20.02.2013).
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0039:FIN:EN:PDF>
- National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Country-specific Council recommendations
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- EU Network of Independent Experts on Social Inclusion (Frazer, H. and Marlier, E. 2012.) Assessment of the implementation of the European Commission recommendation on active inclusion
<http://ec.europa.eu/social/main.jsp?catId=1025&langId=en>
- National Social Reports
<http://ec.europa.eu/social/keyDocuments.jsp?policyArea=750&subCategory=758&type=0&country=0&year=0&advSearchKey=SPCNationalSocialReport&mode=advancedSubmit&langId=en>

4. Rationale for the *ex ante* conditionality

The various challenges on the welfare systems (changing demographics, as well as budget constraints due to the economic and financial crisis) have led to growing risks of poverty and social and labour market exclusion in many countries. They not only

threaten the prospect of reaching the Europe 2020 targets, but also risk durably excluding a fringe of Europe's population from the labour market and more generally from society.

An approach based on active inclusion is particularly well positioned by focusing on both effectiveness (adequate income support combined with activation and access to enabling services) and efficiency (such as one-stop-shops that reduce administrative burden and fraud).

The strategic policy framework should explain how any infrastructure needs have been appraised and how resulting investments will be optimised and sustainable, taking into account relevant considerations such as demographic and territorial factors.

Monitoring and evaluation of active inclusion strategies may identify practices that yield more efficient and effective reduction in poverty (thus cohesion policy investments should be targeted to the identified practices).

Monitoring of the poverty target in light of the implementation of Guideline 10 of the Employment Guidelines may help to identify national challenges, set out key measures, develop and spread more effective and innovative methods and instruments. This would lead to making better use of cohesion policy investments – and thus increase the effectiveness of cohesion policy - to promote social inclusion and combat discrimination.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national strategic policy framework for poverty reduction aiming at active inclusion is in place....</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the framework and indicates where it or its different elements are published (in the form of a link). 		
<p><i>... that:</i></p>		
<p>– <i>provides a sufficient evidence base to develop policies for poverty reduction and monitor developments</i></p> <ul style="list-style-type: none"> ▪ The national strategic policy framework is based on an analysis of the Member State's poverty reduction potential and is based on indicators relevant to active inclusion, ▪ The analysis covers all three strands⁷⁹ of active inclusion separately and addresses the comprehensive and integrated nature of the strategy. ▪ The national strategic policy framework highlights areas in need of improvement, as well as the proposed/implemented measures. 		
<p>– <i>is in accordance with the national poverty and social exclusion target (as defined in the National Reform Programme), which includes the extension of employment opportunities for disadvantaged groups</i></p> <ul style="list-style-type: none"> ▪ There is a national poverty and social inclusion target. ▪ The strategic policy framework is geared towards progress in achieving the target and there is a tangible link between the overall policy framework and the poverty target. When addressing the challenges of implementing an active inclusion strategic policy framework, there is a concrete reference on how tackling challenges (such as low coverage, inadequate income support, in-work poverty, lack of access to services, or lack of integrated approach) contributes to the overall poverty reduction target. 		
<p>– <i>involves relevant stakeholders in combating poverty</i></p> <ul style="list-style-type: none"> ▪ There is evidence that relevant stakeholders are involved in the design and implementation of 		

⁷⁹ i.e. adequate income support, labour market activation, and access to enabling services.

<p>the national strategic policy framework.</p>		
<p>– <i>includes measures for the shift from institutional to community based care</i></p> <ul style="list-style-type: none"> ▪ Measures for the transition from institutional to community based care are in place⁸⁰. ▪ Measures for enabling access to mainstream services in their community (education and training, employment, housing, health, transport, leisure activities) to everyone, regardless the nature of their impairment, are in place. 		
<p><i>Upon request and where necessary relevant stakeholders can be provided with support for submitting project applications and for implementing and managing the selected projects</i></p> <ul style="list-style-type: none"> ▪ Measures are in place to support applicants upon their request in preparing and submitting applications for projects, inter alia by providing information and advice on the design of operations and on the procedure for the submission of applications. ▪ Measures are in place to support beneficiaries upon their request to implement and manage the selected projects, inter alia by providing information and advice. 		

⁸⁰ See section 2.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- European Commission Recommendation of 3 October 2008 on the active inclusion of the people excluded from the labour market (OJ L 307, 18.11.2008, p. 11)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:307:0011:0014:EN:PDF>
- Conclusions of the European Council, June 2010 (EUCO 13/10)
http://ec.europa.eu/eu2020/pdf/council_conclusion_17_june_en.pdf
- Council Decision [2010/707/EU](#) of 21 October 2010 on guidelines for the employment policies of the Member States
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF>
- Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>
- European Council Conclusions of 17 December 2008 on "Common active inclusion principles to combat poverty more effectively"
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/lsa/104818.pdf
- Council decision of 26 November 2009 concerning the conclusion of the United Nations Convention on the rights of persons with disabilities.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free European Commission (COM(2010)636 final)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>
- Council Conclusions of 6 June 2011 on "The European pact of mental health and well-being : results and future action"
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/122389.pdf
- United Nations Convention on the rights of the child adopted in 1989
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

2. Extract of relevant documents

- European Commission Recommendation of 3 October 2008 on the active inclusion of the people excluded from the labour market (OJ L 307, 18.11.2008, p. 11).

The Commission of the European Communities

HEREBY RECOMMENDS THAT THE MEMBER STATES SHOULD:

Design and implement an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services. Active inclusion policies should facilitate the integration into sustainable, quality employment of those who can work and provide resources which are sufficient to live in dignity, together with support for social participation, for those who cannot.

2. Ensure the effectiveness of integrated active inclusion policies through:

(a) comprehensive policy design defining the right mix of the three strands of the active inclusion strategy, taking account of their joint impact on the social and economic integration of disadvantaged people and their possible interrelationships, including synergies and trade-offs;

(b) integrated implementation across the three strands of the active inclusion strategy to effectively address the multifaceted causes of poverty and social exclusion and enhance coordination between public agencies and services which deliver active inclusion policies;

(c) policy coordination among local, regional, national and EU authorities in the light of their particular roles, competences and priorities;

(d) active participation of all other relevant actors, including those affected by poverty and social exclusion, the social partners, non-governmental organisations and service providers, in the development, implementation and evaluation of strategies.

- United Nations Convention on the rights of persons with disabilities

Article 19 - Living independently and being included in the community

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

- United Nations Convention on the Rights of the Child

Article 3

Preamble

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

- United Nations guidelines on the alternative care for children, adopted in 2009

Chapter II: general Principles

20. Use of residential care should be limited to cases where such a setting is specifically appropriate , necessary and constructive for the individual child concerned and in his/her best interest.

[...]

22. While recognising that residential care and family based care complement each other in meeting the needs of the children, where large residential care facilities remain , alternatives should be developed in the context of an overall deinstitutionalisation strategy with precise goals and objectives which will allow for their progressive elimination. To this end states should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualised and small-group care and should evaluate existing facilities against these standards.

- European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe

Chapter 2

The Commission will work to promote the transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people;

- Council Conclusions of 6 June 2011 on "The European pact of mental health and well-being : results and future action"

The Council of the European Union

[...]

21. INVITES Member States to:

Promote, where possible and relevant, community-based, socially inclusive treatment and care models;

22. INVITES Member States and the Commission to:

Managing the evolution of community-based and socially-inclusive approaches to mental health;

- Social Protection Committee's key messages, annexed to the Council conclusions of 4 October 2012 on preventing and tackling child poverty and social exclusion and promoting children's well-being

Support children and their families through high quality child protection and social services and preventive measures based on the child's best interest. Where alternative care is necessary, ensure quality care, access to mainstream services and support transition to adulthood through specific services.

3. Further reading

- Commission Communication of 3.10.2008 on a Commission Recommendation on the active inclusion of people excluded from the labour market (COM(2008) 639 final).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0639:EN:NOT>

- European Parliament Resolution of 6.5.2009 on the active inclusion of people excluded from the labour market (2008/2335(INI))

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0371+0+DOC+XML+V0//EN>

- Mental health declaration of the European ministerial conference of the World Health Organisation of 15 January 2005.

http://www.euro.who.int/data/assets/pdf_file/0008/96452/E87301.pdf

- United Nations guidelines on the alternative care for children, adopted in 2009

<http://www.iss-ssi.org/2009/index.php?id=25>

- Social Protection Committee report on tackling and preventing child poverty and child well-being (27.06.2012)

<http://ec.europa.eu/social/main.jsp?langId=en&catId=758>

- Council Conclusions on preventing and tackling child poverty and social exclusion and promoting children's well-being, October 2012; including key messages from the Social Protection Committee

<http://register.consilium.europa.eu/pdf/en/12/st14/st14437.en12.pdf>

- Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=614&furtherNews=yes>

A.10-2 Roma inclusion⁸¹

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
<p>10. Promoting social inclusion and combating poverty (<i>poverty target</i>)</p> <p>(referred to in Article 9(9))</p>	<p>ESF:</p> <ul style="list-style-type: none"> - Integration of marginalised Roma communities <p>ERDF:</p> <ul style="list-style-type: none"> - investing in health and social infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status, and transition from institutional to community-based services - support for physical and economic regeneration of deprived urban and rural communities 	<p>10.2. A national Roma inclusion strategic framework is in place</p>	<p>A national Roma inclusion strategy is in place that:</p> <ul style="list-style-type: none"> - sets achievable national goals for Roma integration to bridge the gap with the general population. These targets should address the four EU Roma integration goals relating to access to education, employment, healthcare and housing; - identifies where relevant those disadvantaged micro-regions or segregated neighbourhoods, where communities are most deprived, using already available socio-economic and territorial indicators (i.e. very low educational level, long-term unemployment, etc.); - includes strong monitoring methods to evaluate the impact of Roma integration actions and a review mechanism for the adaptation of the strategy. - is designed, implemented and monitored in close cooperation and continuous dialogue with Roma civil society, regional and local authorities. <p>- Upon request and where necessary relevant stakeholders can be provided with support for submitting project applications and for implementing and managing the selected projects.</p>

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State supports Roma integration under the following investment priorities:

- **ESF:** Integration of marginalised communities such as the Roma (Art. 3(1)(c)(ii) ESF Reg.).
- **ERDF:**

⁸¹ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow). Moreover, the Commission suggests that this *ex ante* conditionality should be also applicable for ERDF investments.

- investing in health and social infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status, and transition from institutional to community-based services (Art. 5(9)(a) ERDF Reg.)
- support for physical and economic regeneration of deprived urban and rural communities (Art. 5(9)(b) ERDF Reg.)

2. Definitions

Marginalised communities

The Commission does not provide a definition for marginalised communities, leaving to Member States the responsibility to do so on the basis of national indicators. However, marginalisation can be established by looking at a combination of relevant indicators such as measures of high long-term unemployment, low level of education attainment, discrimination, (extremely) poor housing conditions, and disproportionate exposure to health risks and/or lack of access to health care, as well as territorial deprivation.

Desegregation/spatial integration

Desegregation is generally defined as the process leading to an ending of marginalisation of a group and its inclusion in the mainstream society. Segregation can have different dimensions such as legal, economic, social and physical exclusion. Spatial/residential segregation is a major characteristic of Roma exclusion.

Disadvantaged micro-regions

Disadvantaged micro-regions are areas with macro-economic, infrastructural, employment and social indicators dramatically below the average of the regions, the country or the EU27 level.

3. Source of information for assessment

- Strategic planning documents:
 - National Roma Integration Strategies (NRIS) or integrated sets of policy measures
http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm
 - National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
 - National Social Reports
<http://ec.europa.eu/social/keyDocuments.jsp?policyArea=750&subCategory=758&type=0&country=0&year=0&advSearchKey=SPCNationalSocialReport&mode=advancedSubmit&langId=en>
- Information sources on the implementation of NRIS or integrated sets of policy measures:
 - Regular bilateral dialogues with the Member States organised as a follow up of the adoption of the 2012 Commission Communication “An EU framework for National Roma Integration Strategies up to 2020”
 - Exchanges in the meetings of the Network of National Roma Contact Points

- Results of national monitoring (Member States are invited to share with the Commission the findings of their monitoring of the implementation of their respective strategies)
 - Results of monitoring by civil society (Member States must take the necessary measures to secure the participation of civil society in the review, implementation and monitoring of their national strategies)
 - Thematic Social Protection Committee reviews
 - Results of the Commission's monitoring of Member States' progress in implementing the national Roma integration strategies⁸²
- Other sources:
 - Country-specific Council recommendations
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
 - Commission Staff Working Documents on the assessment of the National Reform Programmes and the Stability/Convergence Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

4. Rationale for the *ex ante* conditionality

For the next programming period 2014-2020 investment priorities to the benefit of the Roma communities have been set under the ESF and ERDF. An *ex ante* conditionality under these investment priorities is justified and needed to demonstrate that the strategies or set of policy measures on Roma inclusion are in place, appropriate and under implementation, and to ensure the efficiency of the ESF and ERDF investments in the field, allowing them to be better targeted to contribute more effectively to the implementation of the National Roma Integration Strategies.

⁸² The Commission will review annually the implementation of National Roma Integration Strategies, reporting to the European Parliament and the Council, as well as under the framework of the Europe 2020 Strategy.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national Roma inclusion strategic policy framework is in place...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the strategy or indicates where it or its different elements are published (in the form of a link) 		
<p><i>....that:</i></p>		
<p>– <i>sets achievable national goals for Roma integration to bridge the gap with the general population. These targets should address the four EU Roma integration goals relating to access to education, employment, healthcare and housing</i></p> <ul style="list-style-type: none"> ▪ <u>On access to education goals are set to:</u> <ul style="list-style-type: none"> ○ ensure, as a minimum, primary school completion ○ reduce the number of early school leavers among Roma ○ ensure that all Roma children have access to quality education ○ prevent and combat discrimination and segregation, regardless of whether they are sedentary or not ○ widen the access to quality early childhood education and care ○ encourage participation and enhance access of Roma youngsters to secondary and tertiary education ▪ <u>On access to employment goals are set to:</u> <ul style="list-style-type: none"> ○ grant Roma people access in a non-discriminatory way to vocational training, to the job market and to self-employment tools and initiatives ○ encourage the access to micro-credit ○ promote the employment of qualified Roma as civil servants ○ provide personalised employment services and mediation ▪ <u>On access to healthcare goals are set to:</u> 		

<ul style="list-style-type: none"> ○ provide access to quality healthcare especially for Roma children and women as well as preventive care and social services at a similar level and under the same conditions as to the rest of the population ○ involve qualified Roma in healthcare programmes targeting their communities, where possible ▪ <u>On access to housing goals are set to:</u> <ul style="list-style-type: none"> ○ promote non-discriminatory access to housing, including social housing ○ address the particular needs of non-sedentary Roma (e.g. provide access to suitable halting sites for non-sedentary Roma) ▪ and the goals are framed in an integrated approach where housing interventions are accompanied by interventions in the field of e.g. education, employment, health, etc. 		
<p>– <i>identifies where relevant those disadvantaged micro-regions or segregated neighbourhoods, where communities are most deprived, using already available socio-economic and territorial indicators (i.e. very low educational level, long-term unemployment, etc.)</i></p> <ul style="list-style-type: none"> ▪ Where relevant, the areas with extremely poor Roma communities have been identified. Targeted measures have been defined to address the specificities of the situations. 		
<p>– <i>includes strong monitoring methods to evaluate the impact of Roma integration actions and a review mechanism for the adaptation of the strategy</i></p> <ul style="list-style-type: none"> ▪ There is a national monitoring system in place to assess the impact of the national Roma integration strategy (or set of policy measures). ▪ The monitoring system is able to provide structured and accurate feedback on the implementation of the national strategy (including on the local action plans). It is supported by the existence of a baseline, appropriate indicators and measurable targets, where possible, in collaboration with the National Statistical Offices. ▪ A review mechanism is in place. 		
<p>– <i>is designed, implemented and monitored in close cooperation and continuous dialogue with Roma civil society, regional and/or local authorities</i></p> <ul style="list-style-type: none"> ▪ The existence of a structured, continuous and transparent dialogue with civil society organisations active in the field of Roma inclusion and with Roma communities in the implementation and monitoring of the national strategy (or set of policy measures) as well as in their review. 		

<ul style="list-style-type: none"> ▪ Roma inclusion is mainstreamed into the regional and local agenda and translated into local action plans. ▪ The implementation of these plans is supported by transparent and appropriate budgets and monitoring systems. 		
<p><i>Upon request and where necessary relevant stakeholders can be provided with support for submitting project applications and for implementing and managing the selected projects.</i></p> <ul style="list-style-type: none"> ▪ Measures are in place to support applicants upon their request in preparing and submitting applications for projects, inter alia by providing information and advice on the design of operations and on the procedure for the submission of applications. ▪ Measures are in place to support beneficiaries upon their request to implement and manage the selected projects, inter alia by providing information and advice. 		

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU framework for National Roma Integration Strategies up to 2020, COM(2011) 173 final.

http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf

- EPSCO Council Conclusions: An EU Framework for National Roma Integration Strategies up to 2020, 10658/11 SOC 438.

<http://register.consilium.europa.eu/pdf/en/11/st10/st10658.en11.pdf>

- European Council Conclusions, 23-24 June 2011, EUCO 23/11, CO EUR 14.

<http://register.consilium.europa.eu/pdf/en/11/st00/st00023.en11.pdf>

2. Extract of relevant documents

- EPSCO Council Conclusions: An EU Framework for National Roma Integration Strategies up to 2020, 10658/11 SOC 438.

THE COUNCIL OF THE EUROPEAN UNION,

[...]

INVITES THE MEMBER STATES

[...]

20. to improve the social and economic situation of Roma by pursuing a mainstreaming approach in the fields of education, employment, housing, and healthcare, taking into account, where appropriate, the Common Basic Principles on Roma Inclusion, as well as by ensuring equal access to quality services, and to apply an integrated approach to these policies and make the best use of the funds and resources available;

21. to set or continue working towards their goals, in accordance with the Member States' policies, in the fields of education, employment, healthcare and housing with a view to closing the gaps between marginalised Roma communities and the general population. Particular attention should be paid to the need to ensure equal access in practice. The goals could focus on the following priority areas, paying special attention to the gender dimension:

(a) access to quality education, including early childhood education and care, as well as primary, secondary and higher education, with particular reference to the elimination of possible segregation at school, the prevention of early school leaving and ensuring successful transitions from school to employment;

(b) access to employment, with particular reference to non-discriminatory access to the labour market, as well as active labour market policies, labour market programmes, adult education and vocational training, and support for self-employment;

(c) access to healthcare, with particular reference to quality healthcare including preventive healthcare and health education; and

(d) access to housing, with particular reference to social housing and the need to promote housing desegregation, and making full use of the financing that has recently become available in the context of the European Regional Development Fund;

22. to prepare, update or develop their national Roma inclusion strategies, or integrated sets of policy measures within their broader social inclusion policies, for improving the situation of Roma, by the end of 2011, taking into account their specific circumstances, as well as to consider the need to advance the social and economic inclusion of Roma when designing, implementing and monitoring their National Reform Programmes in the context of the Europe 2020 Strategy;

23. to appropriately monitor and evaluate the impact of the Roma inclusion strategies or integrated sets of measures as referred to in paragraph 22;
24. to ensure, where appropriate, that available EU funds are used in line with national, regional and local Roma inclusion policies;
25. to identify and implement necessary measures for improving access to and ensuring the effective use of EU funds for the social and economic inclusion of Roma, including, for example, modification of operational programmes, making greater use of technical assistance and improving the predictability of financing by increasing the duration of projects and maximising the uptake of funds;
26. to promote desegregation in all policies and to avoid reproducing segregation, so as to overcome this problem in the long term;
27. to appoint a National Contact Point or use an already existing body in order to ensure effective monitoring of the Roma inclusion strategies or integrated sets of measures as referred to in paragraph 22 and to foster the exchange of good practices and discussions on evidence-based approaches in the area of Roma inclusion policies;
28. to promote the active involvement of Roma civil society and all other stakeholders, including at the regional and local levels, in policies to advance Roma inclusion.

[...]

3. Further reading

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: National Roma Integration Strategies: a first step in the implementation of the EU Framework, COM(2012) 226 final
http://ec.europa.eu/justice/discrimination/files/com2012_226_en.pdf
- Commission Staff Working Document (SWD(2012) 133 final) accompanying the Commission Communication on the National Roma Integration Strategies: a first step in the implementation of the EU Framework
http://ec.europa.eu/justice/discrimination/files/swd2012_133_en.pdf
- Common Basic Principles of Roma Inclusion.
http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf
- 2012 FRA/UNDP Report “The situation of Roma in 11 EU Member States – Survey results at a glance”
http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf
- European Fundamental Rights Agency: comparative report on "Housing conditions of Roma and Travellers in the European Union" (2009).

This report provides valuable analysis, insights and lessons on the full range of issues and approaches that should be taken to address housing needs for Roma communities. A number of issues presented are also relevant for other marginalised groups. Good practice case studies are presented from the Czech Republic, Hungary, Ireland, Slovakia, Spain and United Kingdom.

<http://fra.europa.eu/en/publication/2011/housing-conditions-roma-and-travellers-european-union-comparative-report>

- EC World Bank reports:

1- Reducing Vulnerability and Promoting the Self-employment of Roma in Eastern Europe through Financial Inclusion (2012)

<http://www->

wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/09/06/000333037_20120906002654/Rendered/PDF/723310WP0P127200financialinclusion.pdf

2- Toward An Equal Start: Closing the Early Learning Gap for Roma Children in Eastern Europe (2012)

http://siteresources.worldbank.org/EXTROMA/Resources/RomaECD_FinalReport.pdf

A.10-3 Health⁸³

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
10. Promoting social inclusion and combating poverty (<i>poverty target</i>) (referred to in Article 9(9))	<p>ESF:</p> <ul style="list-style-type: none"> - Enhancing access to affordable, sustainable and high-quality health care <p>ERDF:</p> <ul style="list-style-type: none"> - investing in health infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status 	10.3. <i>Health:</i> The existence of a national or regional strategic policy framework for health within the limits of Article 168 TFEU ensuring economic sustainability.	<ul style="list-style-type: none"> - A national or regional strategic policy framework for health is in place that: <ul style="list-style-type: none"> - contains coordinated measures to improve access to quality health services; - contains measures to stimulate efficiency in the health sector through deployment of effective innovative technologies, service delivery models and infrastructure; - contains a monitoring and review system. - A Member State or region has adopted a framework outlining available budgetary resources on an indicative basis and a cost-effective concentration of resources on prioritised needs for health care.

1. When to assess applicability?

The applicability of this conditionality has to be assessed if a Member State selects the following investment priorities:

- **ESF:** Enhancing access to affordable, sustainable and high-quality services, including health care and social services of general interest (Art. 3(1)(c)(iv) ESF Reg.)
- **ERDF:** Investing in health and social infrastructure which contribute to national, regional and local development, reducing inequalities in terms of health status, and transition from institutional to community-based services (Art. 5(9)(a) ERDF Reg.)

2. Definitions

Health systems are the processes and infrastructures (legal, physical, financial and human resources) to deliver health care, prevent disease and improve health status. Health systems include not only health care but also public health measures.

⁸³ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).
225/300

Healthcare means health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices." (Directive 2011/24/EU on Patients' Rights, March 2011)

Health technology means a medicinal product, a medical device or medical and surgical procedures as well as measures for disease prevention, diagnosis or treatment used in healthcare" (Directive 2011/24/EU on Patients' Rights, March 2011)

A strategic policy framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders. It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, , including mapping of the necessary infrastructure with a view to assuring its long-term optimisation and sustainability, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

In the case of health, a strategic policy framework means a comprehensive document (or set of complementary documents) providing strategic direction and priorities for health care delivery and public health, which is defined and approved by the competent national or regional authorities. The name of the document(s) can vary (eg. strategy, plan, framework, roadmap, memorandum of understanding in the case of countries under Troika supervision, healthcare reform law). It may be a policy document or a legal act containing programmatic aspects. It can be annual or multi-annual.

3. Source of information for assessment

- Document(s) composing the strategic policy framework
- Document(s) composing the budgetary framework

4. Rationale for the *ex ante* conditionality

Some investments in the health sector supported by the structural funds 2007-2013 have failed to achieve the intended objectives and impacts on effective, sustainable and quality healthcare systems. Experience has shown that interventions lacked overall strategic thinking and budgetary planning.

The health *ex ante* conditionality – requesting the adoption of a coherent strategic policy and budgetary framework for health – is a critical factor and a prerequisite for the early and efficient definition of the areas in need of financing and the type of investments required towards a cost-effective, sustainable and accessible health system, and therefore has a direct link to the cost-effectiveness of European Structural and Investments (ESI) fund interventions in this area.

As for the criteria within the conditionality, access to quality health services is crucial to ensure a healthy and productive population and for social inclusion. It is also relevant for economic and territorial cohesion. Measures to stimulate efficiency in the health sector

through innovation (not just related to technology, also to the organisation, management and delivery of healthcare) are conducive to the effectiveness and sustainability of health systems. A sound system for monitoring and review should ensure that the strategic policy framework is timely and appropriately implemented.

The strategy should explain how infrastructure needs have been appraised and how this exercise has been translated into decisions mapping out the long-term infrastructure network, which will form the framework for co-financed investments. Considerations such as demographic and territorial factors should be taken into account. Such an approach is necessary in order to ensure that infrastructure investments are part of an integral strategy, thus avoiding the financing of piecemeal or obsolete investments.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A national or regional strategic policy framework for health is in place...</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the framework document or documents and indicates where it or its different elements are published (in the form of a weblink). 		
<p><i>... that...</i></p>		
<ul style="list-style-type: none"> – <i>contains coordinated measures to improve access to quality health services;</i> <ul style="list-style-type: none"> ▪ <u>As and where appropriate depending on the specific national or regional context, access measures relate to:</u> <ul style="list-style-type: none"> ○ organization of care (opening hours, medical staff shifts, management of waiting lists, primary care, GP quotas of patients, gatekeeping, choice of providers, home or out-patient care); ○ territorial access (availability and location of services and personnel); ○ physical access (access for the disabled); ○ insurance coverage, affordability and measures to address socio-economic factors affecting access; ○ out-reach initiatives for hard-to-reach, marginal or vulnerable groups; ○ technology related measures to improve tele-access (see also sub-criteria on innovative technologies); ○ access to pharmaceuticals and other medicinal products; ○ [- or other measures to improve access to health services.] ▪ <u>As and where appropriate depending on the specific national or regional context, quality measures relate to:</u> <ul style="list-style-type: none"> ○ patient safety (including on healthcare associated infections (HAI) and anti-microbial resistance (AMR)) and patient information; ○ adequacy and efficacy of care (either from a medical perspective or a social/linguistic 		

<p>perspective);</p> <ul style="list-style-type: none"> ○ adherence to treatment and proper follow-up care; ○ satisfaction of patients; ○ [- or other quality measures.] 		
<p>– <i>contains measures to stimulate efficiency in the health sector through deployment of effective innovative technologies, service delivery models and infrastructure;</i></p> <ul style="list-style-type: none"> ▪ <u>As and where appropriate depending on the specific national or regional context, measures relate to:</u> <ul style="list-style-type: none"> ○ deployment of effective, innovative and interoperable technologies (e-health e.g. telemedicine, e-medical record, e-prescription; and improved IT tools for coordination of response to health threats and for health information systems for EU-level reporting); ○ service delivery models (e.g. transformative measures such as shift from hospital- and institutional-based care to community-based (or home-based) care, or promotion of more integrated forms of care e.g. intersection between health and social care; support measures such as training to health workers); ○ infrastructure (e.g. concentration of specialized services, availability and accessibility of all services); ○ [- or other measures to stimulate efficiency in the health sector through deployment of effective innovative technologies, service delivery models and infrastructure.] 		
<p>– <i>contains a monitoring and review system</i></p> <ul style="list-style-type: none"> ▪ There is a monitoring and review system for the implementation of the strategic policy framework including target or process indicators. 		
<p><i>A Member State or region has adopted a framework outlining available budgetary resources on an indicative basis and a cost-effective concentration of resources on prioritised needs for health care</i></p> <ul style="list-style-type: none"> ▪ There is a budgetary framework outlining available resources for health care indicating cap figures or approximate bracket figures for the expenditure headings and sub-headings, indicating implicitly or explicitly that cost-effectiveness and concentration of resources is applied. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Treaty on the Functioning of the European Union (Art. 168)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF>
- [Council conclusions on common values and principles in EU health systems](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:146:0001:0003:EN:PDF) (June 2006)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:146:0001:0003:EN:PDF>
- EU Health Strategy “[Together for Health: A Strategic Approach for the EU](#)” (December 2007) (COM(2007) 630 final)
- Joint Report on Health Systems, by the European Commission (EC) and the Economic Policy Committee (EPC) (November 2010)
http://europa.eu/epc/pdf/joint_healthcare_report_en.pdf
- [Council conclusions "Towards modern, responsive and sustainable health systems"](#) (June 2011)
- [Directive 2011/24/EU on the application of patients' rights in cross-border healthcare](#) (March 2011)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

2. Extract of relevant documents

- Treaty on the Functioning of the European Union

Article 168: A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities"; "Union action is to complement national policies and be directed towards improving public health"; and the Union shall "if necessary, lend support to [Member States] action.

- [Council conclusions on common values and principles in EU health systems](#) (June 2006)

The health systems of the European Union are a central part of Europe's high levels of social protection, and contribute to social cohesion and social justice as well as to sustainable development.

The overarching values of universality, access to good quality care, equity, and solidarity have been widely accepted in the work of the different EU institutions. Together they constitute a set of values that are shared across Europe. Universality means that no-one is barred access to health care; solidarity is closely linked to the financial arrangement of our national health systems and the need to ensure accessibility to all; equity relates to equal access according to need, regardless of ethnicity, gender, age, social status or ability to pay. EU health systems also aim to reduce the gap in health inequalities, which is a concern of EU Member

States; closely linked to this is the work in the Member States' systems on the prevention of illness and disease by inter alia the promotion of healthy lifestyles.

All health systems in the EU aim to make provision, which is patient-centred and responsive to individual need."

"It is an essential feature of all our systems that we aim to make them financially sustainable in a way which safeguards these values into the future.

- EU Health Strategy (December 2007)

Principle 1 "A Strategy Based on Shared Health Values"

"Health policy (...) should be founded on clear values. (...) Article 35 of the Charter of Fundamental Rights recognises the right of access to preventive healthcare and to benefit from medical treatment."

Principle 2 "Health is the greatest wealth"

"Health is important for the wellbeing of individuals and society, but a healthy population is also a prerequisite for economic productivity and prosperity."

"Spending on health (...) is an investment."

"The EU health sector is a major provider of employment and training: the health and social care sector has been a key driver of the expansion of the services sector (...)"

Principle 3 "Health in all policies"

"The population's health is not an issue for health policy alone. Other Community policies play a key role, for example regional and environment policy, tobacco taxation, regulating pharmaceuticals and food products, animal health, health research and innovation, coordinating social security schemes, health in development policy, health and safety at work, ICT (...)"

"Health policy at Community level should foster good health, protect citizens from threats, and support sustainability"

Objective 1 – Fostering good health in an ageing Europe

"Healthy ageing must be supported by actions to promote health and prevent disease throughout the lifespan by tackling key issues including poor nutrition, physical activity, alcohol, drugs and tobacco consumption, environmental risks, traffic accidents, and accidents in the home. Improving the health of children, adults of working age and older people will help create a healthy, productive population and support healthy ageing now and in the future."

Objective 3 - Supporting Dynamic Health Systems and New technologies

"EU Health systems are under mounting pressure to respond the challenges of population ageing, citizens' rising expectations, migration, and mobility of patients and health professionals.

New technologies have the potential to revolutionise healthcare and health systems and to contribute to their future sustainability."

- EC/EPC Joint Report on Health Systems (November 2010)

"Main challenges ahead to contain costs and make the health systems more efficient

1. Sustainable financing basis to the sector, a good pooling of funds and a resource allocation that is not detrimental to more vulnerable regions;
2. Adjusting existing cost-sharing systems to ensure that they encourage a cost-effective use of care;
3. A balanced mix of different staff skills and preparing for potential staff needs due to ageing;
4. Improving and better distribute primary health care services and reducing the unnecessary use of specialist and hospital care;
5. Increasing hospital efficiency;
6. Cost-effective use of medicines while allowing for innovation in the health sector;
7. Improving the general governance (coherence of decision-making and management) of the system;
8. Improving data collection and information channels and using available information to support performance improvement;
9. Using health technology assessment more systematically to help decision-making processes;
10. Improvement in life-styles and access to more effective health promotion and disease prevention."

- Council Conclusions "Towards modern, responsive and sustainable health systems" (June 2011)

"[The Council] Invites Member States to:

- consider innovative approaches and models of health care responding to challenges, and develop future long-term health sector strategies, with particular emphasis on effective investment in the health sector and in human resources with the aim of moving away from hospital-centred systems towards integrated care systems, enhancing equitable access to high quality care and reducing inequalities;
- further strengthen health promotion and disease prevention in an integrated manner in the spirit of the Health in All Policies approach;
- foster health technology assessments and ensure smarter use of e-health solutions to ensure value for money and benefits for health and health systems;
- make smarter use of EU financial programmes, including inter alia Structural Funds, which can contribute to health system innovation and to reducing health inequalities, and can trigger further economic growth"

- Directive on the application of patients' rights in cross-border healthcare (March 2011)

Chapter II. Responsibilities of Member States with regard to cross-border healthcare

Article 4.

Responsibilities of the Member State of treatment

1. Taking into account the principles of universality, access to good quality care, equity and solidarity, cross-border healthcare shall be provided in accordance with:
 - (a) the legislation of the Member State of treatment;
 - (b) standards and guidelines on quality and safety laid down by the Member State of treatment; and
 - (c) Union legislation on safety standards."

"Chapter IV. Cooperation in Healthcare.

Article 10.

Mutual assistance and cooperation

2. Member States shall facilitate cooperation in cross-border healthcare provision at regional and local level as well as through ICT and other forms of cross-border cooperation.
3. The Commission shall encourage Member States, particularly neighbouring countries, to conclude agreements among themselves. The Commission shall also encourage the Member States to cooperate in cross-border healthcare provision in border regions.

- SWD Investing in Health, accompanying the Communication "Towards social investment for growth and cohesion" (February 2013)

"Investing in health helps the EU rise to the challenges identified in its Health Strategy [Dec 2007] that have been compounded by the economic crisis: an ageing population, an increase in chronic diseases, a greater demand for healthcare and the high cost of technological progress.

Health is a value in itself. It is also a precondition for economic prosperity. People's health influences economic outcomes in terms of productivity, labour supply, human capital and public spending.

Health expenditure is recognised as growth-friendly expenditure."

- "1. Investing in sustainable health systems combines innovative reforms aimed at improving cost-efficiency and reconciling fiscal consolidation targets with the continued provision of sufficient levels of public services.
2. Investing in people's health as human capital helps improve the health of the population in general and reinforces employability, thus making active employment policies more effective, helping to secure adequate livelihoods and contributing to growth.
3. Investing in reducing health inequalities contributes to social cohesion and breaks the vicious spiral of poor health contributing to, and resulting from, poverty and exclusion.
4. Investing in health through adequate support from EU funds."

3. Further reading

- [Council Recommendation on patient safety, including the prevention and control of healthcare associated infections](#) (June 2009)
- [Commission Communication "Solidarity in Health: Reducing Health Inequalities in the EU"](#) (October, 2009) (COM(2009) 567 final)
- [Council conclusions "Innovative approaches for chronic diseases in public health and healthcare systems"](#) (December 2010)
- [Council conclusions "The European Pact for Mental Health and Well-being: results and future action"](#) (June 2011)
- Council conclusions 'Healthy Ageing across the Lifecycle' (December 2012)
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/134097.pdf
- Europe 2020 Integrated Guidelines: Guideline 1 (Ensuring the quality and the sustainability of public finances) & Guideline 10 (Combating poverty and social exclusion):
 - Broad Guidelines for the economic policies of the Member States and of the Union (Europe 2020 Integrated Guidelines 1 to 6)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010H0410:EN:NOT>
 - Employment Guidelines adopted by Council Decision 2010/707/EU of 21 October 2010 (Europe 2020 Integrated Guidelines 7 to 10):
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF>
 - Council Decision 2012/238/EU of 26 April 2012 maintained the Employment Guidelines for 2012
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:119:0047:0048:EN:PDF>
- Annual Growth Survey 2012 and 2013
http://ec.europa.eu/europe2020/making-it-happen/annual-growth-surveys/index_en.htm
- Commission Staff Working Document 'Investing in Health' (SWD(2013) 43 final), accompanying the Communication "Towards social investment for growth and cohesion" (February 2013) (COM(2013) 83 final)
http://ec.europa.eu/health/strategy/docs/swd_investing_in_health.pdf

C

DRAFT

A.11 Member States administrative efficiency⁸⁴

Thematic objectives	Investment priorities	<i>Ex ante</i> conditionality	Criteria for fulfilment
1. Enhancing institutional capacity and efficient public administration (referred to in Article 9(11))	Member States administrative efficiency	<p><i>Member States administrative efficiency:</i></p> <p>- The existence of a strategic policy framework for reinforcing the Member State's administrative efficiency including public administration reform</p>	<p>– A strategic policy framework for reinforcing a Member State's administrative efficiency with the following elements are in place and in the process of being implemented:</p> <ul style="list-style-type: none"> – an analysis and strategic planning of legal, organisational and/or procedural reform actions; – the development of quality management systems; – integrated actions for simplification and rationalisation of administrative procedures; – the development and implementation of human resources strategies and policies covering identified main gaps in this field; – the development of skills at all levels; – the development of procedures and tools for monitoring and evaluation.

1. When to assess applicability?

The applicability of this *ex ante* conditionality has to be assessed if a Member State invests in strengthening the efficiency of its public administration (as set out in column 2 of Annex V CPR) under one of the following investment priorities:

- **ESF:** Investment in institutional capacity and in the efficiency of public administrations and public services with a view to reforms, better regulation and good governance (Art. 3(1)(d)(i) ESF Reg.);
- **ERDF:** Enhancing institutional capacity and an efficient public administration by strengthening of institutional capacity and the efficiency of public administrations and public services related to implementation of the ERDF, and in support of actions in institutional capacity and in the efficiency of public administration supported by the ESF (Art. 5(11) ERDF Reg.)
- **Cohesion Fund (CF):** enhancing institutional capacity and an efficient public administration by strengthening of institutional capacity and the efficiency of

⁸⁴ This table is partly based on the Council's PGA and partly on the Commission proposal (text in yellow).

public administrations and public services related to implementation of the Cohesion Fund (Art. 3 (e) CF Reg.).

2. Definitions

A strategic policy framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. It sets out the scope, timeframe, concrete and comprehensive objectives, measures to achieve these, allocation of resources and monitoring and evaluation instruments to assess progress of implementation. The measures taken or described should be consistent with the specific situation within the Member State and based on relevant data.

An analysis and strategic planning of legal, organisational and/or procedural reform actions: Such analysis should refer to examining the existing regulatory framework, organisational structures and/or procedural rules for their relevance and possible improvement, where relevant, for their changes/simplifications based on impact assessments (or similar tools), studies, evaluations as well as national and international performance indexes such as, but not limited to, EU, OECD and World Bank on governance, corruption, business friendliness, strategic human resources management, e-government.

The development of quality management systems (QMS): QMS are management processes designed to improve the quality of services within an organization addressing the principles and processes surrounding the design, development and delivery service aiming at delivery of services with higher value (= ratio Quality/cost) in view of a rational use and allocation of resources. There is a set of actions referring to the establishment or use of already established QMS in a sustainable way such as, but not limited to, Common Assessment Framework, European Foundation for Quality Management (EFQM) or other international quality standards such as ISO 9000, ISO 9001:2000 and ISO9004:2000. They should identify needs and expectations of citizens, business and other interested parties (social partners, NGO).

Integrated actions for simplification and rationalisation of administrative procedures: Main needs and goals in terms of simplification and rationalisation of administrative procedures have to be identified.

There are integrated actions for simplification and rationalisation of administrative procedures, including e-governance solutions. These actions are assured by procedures to assess the administrative burden, integrated in the national policy making. This may imply the use of evidence-based policy assessment of the impact of administrative procedures in terms of administrative burdens for citizens and businesses (eg. the use of the EU Standard Cost Model, Regulatory Impact Assessments and Regulatory Impact Analysis or similar tools). These actions, based on accurate and real-time data, could relate to, but are not limited to, the implementation of the "Think Small First" principle, Common Commencement Dates, the EU Justice Scoreboard, competitiveness proofing, information on the implementation of e-administration projects (in various fields) as well as the time frame and costs for citizens and businesses on their activities:

- starting and closing a business;
- obtaining business licenses;
- enforcing contracts;
- insolvencies;
- dealing with construction permits;
- registering property;
- prepare and file tax returns;

Clear formulation of expected outputs should be a key element of these strategies.

There is also a regular review of the administrative burden and as a result a plan (list of laws which impose administrative burdens on citizens and businesses) including respective actions.

The development and implementation of human resources (HR) strategies and policies covering identified main gaps:

- Identification of main needs/gaps and goals (targets and milestones) in terms of development and implementation of HR in civil service at any level, anticipating also future needs and challenges. There should be mechanisms for developing and implementing human resources strategies and policies. They may also include tools for regular needs assessment, systems for horizontal management of the human resources of the civil service, etc. The key elements to be addressed are:
- the existence and main elements of the Human Resources (HR);
- completeness of the necessary legal framework;
- stability of the civil service, including trends like overall staffing, staff retention and turnover, mobility, age/gender structure, ethics, skills, remuneration, etc.;
- adequacy of the recruitment procedures;
- adequacy of the appraisal and promotion system;
- adequacy of the career development opportunities;
- adequacy of the disciplinary procedures;
- workforce planning;
- adequacy of the organisation for implementation of the HR policy;
- the usage of the human resources management bodies for performance assessments, capacity reviews and other tools to engage and promote strategic workforce planning.

The development of skills at all levels: The identification of needs and goals in terms of training of civil servants in view of planned improvements/reforms across the public administrations, indicating broad coverage at all levels. Moreover, it relates to the implementation of the plan for developing skills at all hierarchical levels, together with the assurance of the existence of appropriate organisation (including availability of resources, training institutions, and necessary procedures).

The actions have to develop existing or provide new learning opportunities for employees, they have to cover personal skills development and career advancement, but

also different education and hierarchical levels a in line with the human resources strategies and policies.

The development of procedures and tools for monitoring and evaluation

There are mechanisms for developing and implementing human resources strategies and policies. Moreover, there is a system which allows monitoring and evaluation of main needs/gaps and goals (targets and milestones) in terms of development and implementation of HR in the civil service. It should be ensured that this system includes proper mechanisms and structures for collecting and processing data and information and for feeding it back into the management process.

The procedures and tools for monitoring and evaluation should be linked to the use of output, result and other specific impact indicators, performance indicators as well as quantitative targets and milestones. Of particular importance are also mechanisms for effective coordination both vertically, among different levels of administration, as well as horizontally, among different ministries.

Administrative efficiency: The administrative efficiency is the capacity of a public organisation/institution (or a set of public institutions) to produce desired results with a minimum expenditure of time, money, personnel, materiel, etc. It refers to the best ratio between resources employed and results achieved.

Think Small First principle and competitiveness proofing⁸⁵: in all legislation and administration the Member States should assess the effect of new legislative proposals on businesses and in particular on SMEs.

EU Justice Scoreboard⁸⁶: tool to promote effective justice in the European Union and thereby reinforce economic growth. The EU Justice Scoreboard is a comparative tool, which seeks to provide reliable and objective data on the justice systems in all 27 Member States, and in particular on the quality, independence and efficiency of justice, which are the key components of an 'effective justice system'. Effective justice systems are crucial for growth and for the effective implementation of EU law, as national courts play an essential role in upholding EU law. Improving the quality, independence and efficiency of judicial systems already forms part of the EU's economic policy coordination process under the European Semester.

Common Commencement Dates⁸⁷: business-related legislation comes into force on a limited number of fixed dates, with a view to ensuring a more streamlined flow and early information on new regulation concerning SMEs.

Total Quality Management (TQM): A customer-focused management philosophy that seeks to continuously improve business processes using analytical tools and teamwork involving all employees. There are several TQM models: the EFQM, the Common Assessment Framework, the Malcolm Baldrige (USA) and ISO 9004 are the most commonly used.

⁸⁵ Report of the Expert Group, Think Small First – Considering SME interests in policy-making including the application of an 'SME Test', 2009.

http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/report_think_small_first_en.pdf

⁸⁶ http://ec.europa.eu/justice/newsroom/news/130327_en.htm

⁸⁷ More information: http://ec.europa.eu/enterprise/policies/sme/business-environment/common-commencement-dates/index_en.htm

3. Source of information for assessment

- National Reform Programmes
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Council Recommendations (CSRs) on Member State's National Reform Programme
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Commission Staff Working Document (SWD) on the assessment of the National Reform Programmes and the Stability/Convergence Programme
http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm
- Specific additional information referred to by Member States in their self-assessment.
- Study on "Excellence in Public Administration for competitiveness in EU Member States", published in November 2012
http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/improving-public-administration/index_en.htm
- The main results of the study are also included in the "Report on Member States competitiveness performance and policies 2012"
http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/index_en.htm
- Europe 2020 Key areas: comparing Member States' performances: "Quality of Public Administration"
http://ec.europa.eu/europe2020/making-it-happen/key-areas/index_en.htm

4. Rationale for the *ex ante* conditionality

Effective public policies require a competent and efficient administration, impartial and client oriented.

Lack of quality of the public administration contributes to reduced competitiveness and thus negatively impacts on cohesion⁸⁸.

The strategy is required to plan and effectively implement the different elements of the envisaged reform.

⁸⁸Assessment of administrative and institutional capacity building interventions and future needs in the context of the European Social Fund (VC/2009/066 - 009), European Commission 2011; Meyer-Sahling J-H. (2009): Sustainability of civil service reforms in Central and Eastern Europe five years after EU accession; OECD - SIGMA Paper No. 44; OECD Working Papers on Public Governance, 2007/4, OECD Publishing.

All elements to be included in the strategy (i.e. the criteria) are required in order to achieve the envisaged results and to ensure their effectiveness and thus the effectiveness of the cohesion policy investments.

DRAFT

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>A strategic policy framework for reinforcing a Member State's administrative efficiency with the following elements is in place and in the process of being implemented</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the name of the framework and indicates where it or its different elements are published (in the form of a link). ▪ The strategic policy framework is in the process of being implemented for each element. 		
<p>– <i>an analysis and strategic planning of legal, organisational and/or procedural reform actions</i></p> <ul style="list-style-type: none"> ▪ There is an analysis and strategic planning of legal, organisational and/or procedural reform actions based on main needs and goals. ▪ The analysis is based on an examination of the existing regulatory framework, the organisational structure and/or procedural rules with the view to reinforce efficiency. ▪ There is a mechanism for coordination and dialogue between relevant bodies in charge of the preparation and implementation of the reform actions. ▪ There are targets and milestones, a timeframe and allocation of budget. 		
<p>– <i>the development of quality management systems (QMS)</i></p> <ul style="list-style-type: none"> ▪ There is an assessment of the needs of stakeholders, including citizens, business and other interested parties (social partners, NGOs) and goals to improve their delivery through QMS (main gaps, main needs, main practice and models used). ▪ There is a set of actions referring to the establishment or use of already established QMS in a sustainable way. 		
<p>– <i>integrated actions for simplification and rationalisation of administrative procedures</i></p> <ul style="list-style-type: none"> ▪ Main needs and goals in terms of simplification and rationalisation of administrative procedures have been identified. ▪ There are integrated actions for simplification and rationalisation of administrative procedures, including e-governance solutions. 		

<ul style="list-style-type: none"> ▪ There is a procedure to assess the administrative burden, integrated in the national policy making. ▪ There is a regular review of the administrative burden and as a result a plan (list of laws which impose administrative burdens on citizens and businesses) including respective actions. 		
<p>– <i>the development and implementation of human resources strategies and policies covering identified main gaps in this field</i></p> <ul style="list-style-type: none"> ▪ Main needs/gaps and goals (targets and milestones) in terms of development and implementation of HR in the civil service have been identified ▪ There are mechanisms for developing and implementing human resources strategies and policies. 		
<p>– <i>the development of skills at all levels</i></p> <ul style="list-style-type: none"> ▪ Needs and goals in terms of training of civil servants in view of planned improvements/reforms have been identified ▪ There is a plan for developing skills at all levels. ▪ The appropriate organisation has been put in place in order to provide for the implementation of the plan (including availability of resources, training institutions, necessary procedures). 		
<p>– <i>the development of procedures and tools for monitoring and evaluation</i></p> <ul style="list-style-type: none"> ▪ Needs and goals for establishing/developing monitoring and evaluation have been identified. ▪ There are procedures and tools for monitoring and evaluation. ▪ Availability of indicators. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- The March 2008 Presidency Conclusions⁸⁹ underlined that the quality of public finances needs to be improved.

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/99410.pdf

- Fifth Report on Economic, Social and Territorial Cohesion (EC, 2010)
http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion5/pdf/5cr_en.pdf

- COUNCIL RECOMMENDATION of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union: The Europe 2020 Integrated Guidelines set out the framework for the Europe 2020 strategy and reforms at Member State level. These Guidelines allow both national and EU-level policies to contribute to the Europe 2020 strategy.

<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:191:0028:0034:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:191:0028:0034:EN:PDF)

- Action Programme for Reducing Administrative Burdens in the European Union (COM(2007) 23 final). The Action Programme was endorsed by the Spring European Council in March 2007⁹⁰

http://ec.europa.eu/dgs/secretariat_general/admin_burden/index_en.htm

2. Extract of relevant documents

- The March 2008 Presidency Conclusions

The quality of public finances needs to be improved by raising the efficiency and effectiveness of public **expenditures and revenues, including** continued efforts to combat cross-border tax evasion, modernising public administration and favouring measures in public budgets that promote productivity, employment and innovation.

- Fifth Report on Economic, Social and Territorial Cohesion (EC, 2010)

Point 5.4

Effective public policies require a competent and efficient administration, that is impartial and client oriented.

Strengthening institutional and administrative capacity while creating a stable business environment facilitates structural adjustment and contributes to growth and jobs.

In the 2000–2006 period, the ESF played an important role in the modernisation of public administration. In Portugal, it took 11 procedures and 78 days to start a business in 2005. With the introduction of the one-stop shop, supported by the ESF, it now takes only 7 days and only seven procedures to be completed. As a consequence, the total cost of setting up a business has declined significantly.

⁸⁹ Presidency Conclusions – Brussels, 13/14 March 2008 as part of the Launching the New Cycle of the renewed Lisbon Strategy for Growth And Jobs (2008-2010).

⁹⁰ http://ec.europa.eu/dgs/secretariat_general/admin_burden/index_en.htm

In the 2007–2013 period, a new ESF priority on Institutional Capacity has been introduced for Convergence regions and Cohesion Member States, aimed at strengthening the capacity of public administration and public services at national, regional and local level. Four Member States have devoted an Operational Programme to Institutional Capacity (Hungary, Greece, Romania and Bulgaria) and in many others, it is priority within OPs.

The Institutional Capacity priority supports investment in human capital development and ICT in administrative and public services at all territorial levels. The aims are to improve legislation, facilitate business creation, increase the effectiveness of the management of public policies and improve the services provided to individuals and businesses generally by cutting red tape. The focus in the OPs across the EU is: better regulation (in Poland, Cyprus and Slovakia); reinforcement of the judiciary system (Slovenia and Poland); capacity building of employment institutions (Malta and Slovenia); ethics and integrity (Poland and Hungary); reduction of administrative burden for business (Latvia and Lithuania) and enhancing the level of transparency and anti-corruption (Italy and Romania). In Bulgaria, the ESF is providing support for a full review of the national administration that could serve as basis for structural reform.

- Council Recommendation of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union

Member States should continue to improve the business environment by modernising public administrations, improving corporate governance, removing remaining barriers to the internal market, eliminating unnecessary administrative burdens and avoid unnecessary new burdens by applying smart regulation instruments, including by developing further interoperable e-government services, removing tax obstacles, supporting small and medium-sized enterprises (SMEs), improving their access to the Single Market in line with the ‘Small Business Act for Europe’ and the ‘Think Small First’ principle, ensuring stable and integrated financial services markets, facilitating access to finance, improving conditions for promoting access to and protecting intellectual property rights, supporting internationalisation of SMEs and promoting entrepreneurship, including female entrepreneurship.

3. Further reading

- Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way. High Level Group of Independent Stakeholders on Administrative Burdens, Warsaw 15 November 2011
http://ec.europa.eu/dgs/secretariat_general/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf
- Assessment of administrative and institutional capacity building interventions and future needs in the context of European Social Fund (VC/2009/066 - 009), European Commission 2011
<http://ec.europa.eu/social/BlobServlet?docId=6913&langId=en>
- Meyer-Sahling J-H. (2009): Sustainability of civil service reforms in Central and Eastern Europe five years after EU accession, Sigma Papers, No. 44, OECD Publishing.
<http://dx.doi.org/10.1787/5kml60pvjmbq-en>
- OECD, Overcoming Barriers to Administrative Simplification Strategies: Guidance for Policy Makers 2009
<http://www.oecd.org/regreform/42112628.pdf>
- OECD, Measuring Regulatory Performance, Evaluating Regulatory Management Tools And Programmes, 2012
http://www.oecd.org/gov/regulatory-policy/2_Radaelli%20web.pdf

- European Principles for Public Administration Sigma Papers: No. 27
<http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan006804.pdf>
- Excellence in Public Administration for competitiveness in EU Member States, European Union, 2012
http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/improving-public-administration/index_en.htm
- United Nations Public Administration Network:
<http://www.unpan.org/Regions/Europe/tabid/1105/language/en-US/Default.aspx>
- Senior Budget Officials network on performance and results:
<http://www.oecd.org/gov/budgetingandpublicexpenditures/seniorbudgetofficialsnetworkonperformanceandresults.htm>

DRAFT

DRAFT

B. GENERAL *EX ANTE* CONDITIONALITIES

B.1 Anti-discrimination⁹¹

Area	<i>Ex ante</i> conditionality	Criteria for fulfilment
Anti-discrimination	The existence of a mechanism which ensures effective implementation and application of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin	Effective implementation and application of the EU Directive 2000/78/EC and Directive 2000/43/EC on non-discrimination is ensured through: <ul style="list-style-type: none">– institutional arrangements for the implementation, application and supervision of the EU directives on non-discrimination;– a strategy for training and dissemination of information for staff involved in the implementation of the funds;– Measures to strengthen administrative capacity for implementation and application of the EU directives on non-discrimination.

1. When to assess applicability?

See Part I of the guidance on *ex ante* conditionality. Applicability is to be assessed in relation to the specific objective (in accordance with the definition in Art. 2 CPR). As a general rule, this general *ex ante* conditionality will be applicable to those investment priorities where the interventions require compliance with the anti-discrimination directives.

2. Definitions

National equality body

Article 13 of Directive 2000/43/EC sets the following tasks for the national equality bodies: assistance to victims of discrimination; conducting independent surveys and publishing independent reports and making recommendations.

3. Source of information for assessment

- Annual reports on the implementation and application of Directive 2000/43/EC and Directive 2000/78/EC in Member States: reports by the European Network of the Legal Experts in the non-discrimination field:

<http://www.non-discrimination.net>

These national reports follow the scope of the two Directives and include:

⁹¹ The table below is based on the Commission's proposal.

- pending infringement proceedings concerning the equality body;
 - statistics on the number of cases dealt by the equality body;
 - statistics on independent surveys, reports and recommendations provided by the equality body;
 - information available in national reports and via the European Network of Equality Bodies (EQUINET).
- Statistics on the number and types of cases brought before the national courts under the national legislation transposing these directives.

4. Rationale for the *ex ante* conditionality

The proposed institutional arrangements, a strategy for training of staff involved in the implementation of the funds and measures to strengthen administrative capacity contribute to ensuring that Union law is duly complied with, in order to limit the need for financial corrections, loss of resources and reduced effectiveness of the interventions due to non-respect of EU law and/or lack of appropriate policy interventions.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<i>Effective implementation and application of the EU Directive 2000/78/EC and Directive 2000/43/EC on non-discrimination is ensured through:</i>		
<ul style="list-style-type: none"> – <i>Institutional arrangements for the implementation, application and supervision of the EU directives on non-discrimination:</i> <ul style="list-style-type: none"> ▪ A national equality body under Article 13 of Directive 2000/43/EC has been set up 		
<ul style="list-style-type: none"> – <i>A strategy for training and dissemination of information for staff involved in the implementation of the funds:</i> <ul style="list-style-type: none"> ▪ There is a strategy for training on Directives EU/2000/43/EC and 2000/78/EC for all staff involved in the implementation of the funds (managing authorities, intermediate bodies, certifying authorities and audit authorities) at all relevant levels. ▪ There is a system of dissemination of the relevant guidance towards managing authorities, intermediate bodies, certifying authorities and audit authorities and beneficiaries (via websites, direct mail, etc.) and of exchange of information for all staff involved in the implementation of the funds. 		
<ul style="list-style-type: none"> – <i>Measures to strengthen administrative capacity for implementation and application of the EU directives on non-discrimination:</i> <ul style="list-style-type: none"> ▪ The existence of a central body having the administrative capacity (sufficient number and qualified staff) to give advice on the application of EU anti-discrimination directives. ▪ Support (e.g. guidance documents, external experts) is ensured for all the bodies involved in the application of the anti-discrimination directives. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Treaty obligations

Article 3 TEU: "The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child."

Article 10 TFEU: "In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

- Charter of Fundamental Rights of the European Union

- Article 21(1): "Non-discrimination: Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

Secondary legislation

- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p.16):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:en:PDF>

- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.07.2000, p. 22):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:en:PDF>

2. Extract of relevant documents

- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

Article 1 Purpose

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2
Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
 - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or
 - (ii) as regards persons with a particular disability, the employer or any person or organization to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.
3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.
5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Article 3(1)
Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
 - (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - (c) employment and working conditions, including dismissals and pay;
 - (d) membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations.

Article 7
Positive action

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.
2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Article 12:

Member States shall take care that the provisions adopted pursuant to this Directive, together with relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Article 1:

Purpose

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2:

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Article 3(1):

Scope

1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
 - (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
 - (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
 - (c) employment and working conditions, including dismissals and pay;
 - (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
 - (e) social protection, including social security and healthcare;
 - (f) social advantages;
 - (g) education;
 - (h) access to and supply of goods and services which are available to the public, including housing.

Article 5:

Positive action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

Article 10:

Dissemination of information

Member States shall take care that the provisions adopted pursuant to this Directive, together with relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

Article 13:

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

DRAFT

DRAFT

B.2 Gender equality⁹²

Area	<i>Ex ante</i> conditionality	Criteria for fulfilment
2. Gender equality	The existence of a strategy for the promotion of gender equality and a mechanism which ensures its effective implementation.	<p>Effective implementation and application of an explicit strategy for the promotion of gender equality is ensured through:</p> <ul style="list-style-type: none"> - a system for collecting and analysing data and indicators broken down by sex and to develop evidence-based gender policies; - a plan and <i>ex ante</i> criteria for the integration of gender equality objectives through gender standards and guidelines; - implementation mechanisms including involvement of a gender body and the relevant expertise to draft, monitor and evaluate interventions.

1. When to assess applicability?

See Part I of the guidance on *ex ante* conditionality. Applicability is to be assessed in relation to the specific objective of investment priorities (in accordance with the definition in Art. 2 CPR). As a general rule, this general *ex ante* conditionality will be applicable to those investment priorities where the interventions either require the respect of the principle of gender equality or aim to achieve the promotion of gender equality.

2. Definitions

A strategy for the promotion of gender equality

A strategy is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, non-governmental organisations, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures. In case measures are contained in different policy documents, they need to be embedded in a strategic approach towards the strategy's objective. A strategy sets out the scope, timeframe, concrete and comprehensive objectives, allocation of resources, measures to achieve these and monitoring and evaluation instruments to assess progress of implementation. Strategies for the promotion of gender are sometimes also referred to as National Action Plans, National Programmes or other.

The implementation of the above mentioned strategy should fall under the responsibility of a relevant national authority. This authority should be equipped with the necessary resources to ensure reporting, monitoring and evaluation of the strategy.

⁹² The table below is based on the Commission's proposal.

Equality body

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation⁹³ requires in Article 20 that Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex.

3. Source of information for assessment

The Member State's self-assessment.

4. Rationale for the *ex ante* conditionality

a) Treaty obligations

Article 3 TEU: "The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child."

Article 8 TFEU: "In all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women."

b) EU2020 Strategy:

Beside the legal obligation conferred by the treaties to take into account gender equality and to combat discrimination, there is also a strong economic argument to work towards a more equal and diverse society as demonstrated by a wide range of studies, including by the OECD⁹⁴. The Europe 2020 Strategy includes the headline target of 75% of employment rate for women and men, which implies – looking at current employment rates - that it is necessary to give priority to increasing women's participation in the labour market. Europe's ageing society leads to a shrinking labour force potential which is set to act as a bottleneck to growth if underused labour market potential is not tapped. The general *ex ante* conditionality on gender equality will significantly help to tackle this challenge, in particular through the development of evidence-based gender policies, the involvement of the equality body and the relevant gender expertise in the drafting, monitoring and evaluation of ESI Funds interventions.

⁹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:EN:PDF>

⁹⁴ OECD, 2012, Closing the Gender Gap – Act Now.

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Effective implementation and application of an explicit strategy for the promotion of gender equality....</i></p> <ul style="list-style-type: none"> ▪ The self-assessment contains a reference to the strategy or indicates where it or its different elements are published (in the form of a link) 		
<p><i>...is ensured through</i></p>		
<p>– <i>a system for collecting and analysing data and indicators broken down by sex and to develop evidence-based gender policies</i></p> <ul style="list-style-type: none"> ▪ Member States include gender-specific data and indicators in the design and monitoring of gender polices, in impact assessments and evaluations. ▪ Member States include gender-specific data and indicators in all programming stages of ESI Funds. 		
<p>– <i>a plan and ex ante criteria for the integration of gender equality objectives through gender standards and guidelines</i></p> <ul style="list-style-type: none"> ▪ Member States ensure the promotion and effective implementation of gender mainstreaming, i.e. the integration of a gender perspective into every stage of policy processes and all programming stages of ESI Funds with a view to promoting equality between women and men. 		
<p>– <i>implementation mechanisms including involvement of a gender body and the relevant expertise to draft, monitor and evaluate the interventions</i></p> <ul style="list-style-type: none"> ▪ Arrangements for the involvement of authorities in charge of gender equality in all programming stages of the ESI Funds (preparation, implementation, monitoring and evaluation) are in place, including the existence of an advisory function on gender equality in fund-related activities and the existence of an evaluation and monitoring system for all gender-aspects of the interventions. ▪ Arrangements to ensure that the monitoring committee includes gender expertise and that the gender equality body is invited to the monitoring committee meetings (at least in an advisory capacity). ▪ There is a plan for training on gender equality (including on gender equality law and policy as 		

<p>well as on gender mainstreaming) for the staff involved in the implementation of the funds (managing authorities, intermediate bodies, certifying authorities and audit authorities).</p> <ul style="list-style-type: none">▪ The existence of a system for dissemination of information about the principle of gender equality to the staff involved in the implementation of the ESI Funds (managing authorities, intermediate bodies, certifying authorities and audit authorities).		
--	--	--

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Treaty obligations

- Article 3 TEU: “The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.”

- Article 8 TFEU: “In all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women.”

- Directive 2006/54/EC of the European Parliament and the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:EN:PDF>

2. Extract of relevant documents

- Directive 2006/54/EC of the European Parliament and the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Article 29:

Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive.

Article 30:

Member States shall ensure that measures taken pursuant to this Directive, together with the provisions already in force, are brought to the attention of all the persons concerned by all suitable means and, where appropriate, at the workplace.

- Strategy for equality between women and men (2010-2015):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0491:EN:NOT>

It clearly states that the Commission will:

"Support the promotion of gender equality in the implementation of all aspects and flagship initiatives of the Europe 2020 strategy, especially as regards definition and implementation of relevant national measures, through technical support as well as through the Structural Funds and other major funding programmes."

- European Pact for Gender Equality (2011-2010)

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/119628.pdf

"THE COUNCIL therefore reaffirms its commitment to fulfil EU ambitions on gender equality as mentioned in the Treaty and in particular to:

1. close the gender gaps in employment and social protection, including the gender pay gap, with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and promoting social inclusion in particular through the reduction of poverty, thus contributing to the growth potential of the European labour force;

2. promote better work-life balance for women and men throughout the life-course, so as to enhance gender equality, increase women's participation in the labour market and contribute to meeting the demographic challenges;"

3. Further reading

- DG Justice – Gender equality unit
http://ec.europa.eu/justice/gender-equality/index_en.htm
- Strategy for equality between women and men (2010-2015)
http://ec.europa.eu/justice/gender-equality/document/index_en.htm
- Gender equality legislation
http://ec.europa.eu/justice/gender-equality/law/index_en.htm
- European Pact for gender equality
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lssa/119628.pdf

B.3 Disability⁹⁵

Area	<i>Ex ante</i> conditionality	Criteria for fulfilment
3. Disability	The existence of a mechanism which ensures effective implementation and application of the UN Convention on the rights of persons with disabilities.	<ul style="list-style-type: none"> <li data-bbox="798 295 1248 421">– Effective implementation and application of the UN Convention on the rights of persons with disabilities is ensured through: <ul style="list-style-type: none"> <li data-bbox="845 452 1248 667">– Implementation of measures in line with Article 9 of the UN Convention to prevent, identify and eliminate obstacles and barriers to accessibility of persons with disabilities; <li data-bbox="845 698 1248 855">– institutional arrangements for the implementation and supervision of the UN Convention in line with Article 33 of the Convention; <li data-bbox="845 887 1248 1012">– a plan for training and dissemination of information for staff involved in the implementation of the funds; <li data-bbox="845 1043 1248 1281">– measures to strengthen administrative capacity for implementation and application of the UN Convention including appropriate arrangements for monitoring compliance with accessibility requirements.

1. When to assess applicability?

See Part I of the guidance on *ex ante* conditionality. Applicability is to be assessed in relation to the specific objective (in accordance with the definition in Art. 2 CPR). As a general rule, this general *ex ante* conditionality will be applicable to those investment priorities where the interventions require compliance with Art. 9 of the UN Convention on the Rights of Persons with disabilities ('UN CRPD').

In the case of the ERDF and the Cohesion Fund, this *ex ante* conditionality is potentially *applicable to all investment priorities under which public infrastructure can be supported* to ensure that new infrastructure in particular, but also renovated/reconstructed infrastructure, is accessible to disabled people as well as the elderly and those with reduced mobility following a Design for all approach. It is also potentially applicable to transport investment other than infrastructure (e.g. rolling stock) as well as ICT.

⁹⁵ The table below is based on the Commission's proposal.

In the case of the ESF this *ex ante* conditionality is potentially applicable to interventions in the area of employment, social inclusion and combating poverty, education and life-long learning, and access to social and health services.

2. Definitions

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (Art. 1 UN CRPD).

Accessibility concerns the prevention and removal of barriers that prevent persons with disabilities from having access, on an equal basis with others, to the physical environment (i.a. buildings, roads, other indoor and outdoor facilities, including schools, housing, health facilities and workplaces), transport and related infrastructure, information and communication technologies and systems (ICT), and other facilities and services (Art. 9 UN CRPD and European Disability Strategy 2010-2020, COM(2010) 636 final).

3. Source of information for assessment

- Annual Disability High-level Group joint report on the implementation of the UN Convention on the Rights of Persons with Disabilities.

http://ec.europa.eu/justice/discrimination/files/dhlg_5th_report_en.pdf

Annual update available at:

http://ec.europa.eu/justice/discrimination/document/index_en.htm

- Member States reports to the UN on the implementation of the UN CRPD

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/SPReports.aspx>

- Studies on the implementation of the UN CRPD (on-going Commission's study will be finalised by the end of 2013)

4. Rationale for the *ex ante* conditionality

Effective implementation and application of the UN CRPD will facilitate the implementation of the horizontal principle of equality and non-discrimination as well as accessibility for persons with disabilities thus contributing to the Treaty's objective of promoting of social cohesion. The *ex ante* conditionality sets out the minimum requirements which need to be fulfilled *ex ante* to ensure that there is full compliance with the UN CRPD in areas that fall under EU competence in order to limit the need for financial corrections, loss of resources and reduced effectiveness of the interventions due to non-respect of applicable Union law (as required by Art. 6 CPR).

[Link with Europe 2020](#)

Attaining full economic and social participation of persons with disabilities is essential to achieve the Europe 2020 objectives of creating smart, sustainable and inclusive growth.

There is a considerable employment and education gap between persons with disabilities and the general population. They also have a higher poverty risk. Relevant Europe 2020 targets⁹⁶:

- 75 % of the population aged 20-64 should be employed
 - Employment gap: 45 % versus 68.6%
- The share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary or equivalent degree.
 - Education gap: 19% versus 31%
- The number of people at risk of poverty should be reduced by at least 20 million
 - Poverty risk gap: 15% versus 21 %

Implementing the UN Convention on the Rights of Persons with Disabilities

Since 22 January 2011 the EU has been a party to the UN Convention on the Rights of Persons with Disabilities. The Convention was also signed by all Member States and ratified by 24 of them, while the remaining Member States (i.e. FI, IE and NL) are making progress towards ratification.

The Convention is binding on the EU to the extent of its competences. The areas of EU competences falling under the scope of the Convention are illustrated in the Declaration of Competence annexed to the Council Decision regarding the conclusion by the EU of the Convention⁹⁷. The appendix to the Declaration of competence specifically list Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down 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) as one of the acts illustrating the extent of EU competence under the Convention.

ESI Funds therefore have to be implemented in accordance with the obligations stemming from the Convention, in particular as regards accessibility, equality of opportunities and non-discrimination. Using EU funding in a consistent way in accordance with the UN Convention will reduce the risk of financial corrections for non-compliance with applicable Union law.

Accessibility, one of the general principles of the UN Convention on the Rights of Persons with Disabilities (Art. 3 and 9), is an essential precondition for people with disabilities to be able to participate in society and in the economy and to have access to all areas of life, notably employment, education, social services and healthcare.

Ensuring accessible environments, transport and information and communication including new technologies and services will improve the opportunities for accessing to education and employment thus leading to a lower risk of poverty. Removing accessibility barriers is essential to turn persons with disabilities from passive recipients

⁹⁶ The Academic Network of European Disability Experts (ANED), supported by the Commission, has been gathering data and developing indicators to monitor the situation of persons with disabilities in the EU and the gaps with the rest of the population, in particular as regards the key targets on employment, education and poverty in the Europe 2020 Strategy. Updated reports are published on <http://www.disability-europe.net/theme/data-and-indicators>.

⁹⁷ Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.01.2010, p. 35): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>

of benefits into economic actors and active tax payers contributing to the growth of the economy and a more sustainable society.

Accessibility requirements do not only apply to specific interventions (e.g. in the built environment, transport, information and communication, including new technologies), but are to be consistently applied as a horizontal requirement to all those products and services that are offered to the public and are financed through the ESI Funds. It is necessary, whenever an action is financed by the ESI Funds, to require accessibility to all venues, infrastructures, transport, information and technology and services to be bought, developed, maintained or renewed.

Finally, due to demographic ageing, integrating accessibility in the design and implementation of projects and programmes will contribute to their long-term sustainability from an economic and social perspective, thus increasing substantially the overall impact of EU funding.

DRAFT

5. The fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<i>Effective implementation and application of the UN Convention on the rights of persons with disabilities is ensured through:</i>		
<p>– <i>Implementation of measures in line with Article 9 of the UN Convention to prevent, identify and eliminate obstacles and barriers to accessibility of persons with disabilities</i></p> <ul style="list-style-type: none"> ▪ There are measures on accessibility ensuring to persons with disabilities access, on an equal basis with others, to the physical environment, transportation and related infrastructure, information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. ▪ Minimum accessibility standards and guidelines have been developed, are being applied and enforced. 		
<p>– <i>Institutional arrangements for the implementation and supervision of the UN Convention in line with Article 33 of the Convention</i></p> <ul style="list-style-type: none"> ▪ There is a plan to closely involve the governance mechanisms established by the Member States under Art. 33 UN CRPD, as well as civil society, in particular persons with disabilities and their representative organisations, in the ESI Funds programming cycle to ensure compliance of the interventions with the obligations stemming from the UN CRPD. 		
<p>– <i>A plan for training and dissemination of information for staff involved in the implementation of the funds</i></p> <ul style="list-style-type: none"> ▪ There is a plan for training on the UN CRPD and in particular on accessibility, equality and non-discrimination for persons with disabilities, and the national legal, administrative and policy framework on disability and accessibility. The plan covers all staff involved in the implementation of the funds (managing authorities, intermediate bodies, certifying authorities and audit authorities) at all relevant levels. 		
<p>– <i>Measures to strengthen administrative capacity for implementation and application of the UN Convention including appropriate arrangements for monitoring compliance with accessibility requirements</i></p> <ul style="list-style-type: none"> ▪ The existence of a central body having the administrative capacity (sufficient number and 		

<p>qualified staff) to give advice on the application of the UN Convention on the rights of persons with disabilities.</p> <ul style="list-style-type: none">▪ Support (e.g. guidance documents, external experts) is ensured for all the bodies involved in the application of the UN Convention on the rights of persons with disabilities.▪ Arrangements for monitoring of compliance with accessibility requirements.		
--	--	--

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.01.2010, p. 35)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>

2. Extract of relevant documents

- **United Nations Convention on the Rights of Persons with Disabilities**

Article 3:

The principles of the present Convention shall be:

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 9: Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.

These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

- (a) to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) to provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) to provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) to provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) to promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 33:

National implementation and monitoring

1. States Parties, in accordance with their system of organisation, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process.

3. Further reading

- European Disability Strategy 2010-2020, A renewed commitment to a barrier-free Europe - COM(2010)636 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0636:en:NOT>

B. 4. Public procurement⁹⁸

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
4. Public procurement	The existence of arrangements for the effective application of EU public procurement law in the field of the CSF Funds.	<ul style="list-style-type: none"> – Arrangements for the effective application of EU public procurement rules through appropriate mechanisms; – Arrangements which ensure transparent contract award procedures; – Arrangements for training and dissemination of information for staff involved in the implementation of the funds; – Arrangements to ensure administrative capacity for implementation and application of EU public procurement rules.

1. When to assess applicability?

The conditionality is applicable to all investment priorities the beneficiaries of which are required to comply with public procurement rules and when it is considered that its non-fulfilment would lead to a clearly identified risk to the effective and efficient achievement of a relevant specific objective.

2. Definitions

Directive 2004/18/EC is based on the principles that: advertisement of contracts in the Official Journal of the European Union gives firms throughout the European Union an equal opportunity to tender. Bidders are treated equally with no discrimination on the grounds of nationality or origin of the goods or services and objective criteria are applied to tendering and award procedures.

Public sector: central government, local government and other bodies including corporations mainly funded by the public sector or subject to its management supervision or mainly appointed by the public sector and not having an industrial or commercial character (“contracting authorities”⁹⁹). Where a private body acts as an agent for the contracting authorities or where more than 50% of funding is provided by contracting authorities in relation to certain contracts connected with some building works, the public procurement rules will also apply.

⁹⁸ The text of the table is based on the Council Compromise text of 24 April 2012.

⁹⁹ The contracting authorities are not obliged to be part of public law according to applicable national legislation.

3. Source of information for assessment

Findings of relevant audit reports conducted in Member States.

4. Rationale for the *ex ante* conditionality

Lack of knowledge and experience, as well as inappropriate regulatory arrangements and procedures in place leads to weaknesses in public procurement.

DRAFT

5. Fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p>– <i>Arrangements for the effective application of EU public procurement rules through appropriate mechanisms:</i></p> <ul style="list-style-type: none"> ▪ EU directives on public procurement (2004/17 and 2004/18) have been transposed by the Member State; ▪ Arrangements are in place to address the main types of errors identified by the Commission in relation to the Member State public procurement in the field of the ESIFunds (e.g. conflict of interests, contract amendmends). 		
<p>– <i>Arrangements which ensure transparent contract award procedures:</i></p> <ul style="list-style-type: none"> ▪ Guidance on award of public contracts below thresholds has been prepared by the Member State and made available to the potential beneficiaries and the staff concerned in the managing authorities and intermediate bodies. 		
<p>– <i>Arrangements for training and dissemination of information for staff involved in the implementation of the funds:</i></p> <ul style="list-style-type: none"> ▪ Training for all staff involved with EU public procurement rules at all relevant levels has been provided or has been planned; ▪ Existence of a system of dissemination of the relevant guidance towards managing authorities, intermediate bodies, certifying authorities, audit authorities and beneficiaries (via websites, direct mail, etc.) and of exchange of information for all staff involved in the public procurement for the implementation of ESI Funds. 		
<p>– <i>Arrangements to ensure administrative capacity for implementation and application of EU public procurement rules:</i></p> <ul style="list-style-type: none"> ▪ Existence of a central body (or a coordinated network of bodies) having the administrative capacity (sufficient number and qualified staff) to give advice on application of EU public procurement rules; ▪ Technical assistance (e.g. guidance documents, external experts) ensured for all the bodies involved in the application of public procurement. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Directive 2004/17 – procurement in the water, energy, transport and postal services sectors

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>

- Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>

2. Extract of relevant documents

- Guidelines for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts co-financed by the Structural Funds or the Cohesion Fund during the programming periods 2000-2006 and 2007-2013

http://ec.europa.eu/regional_policy/information/guidelines/index_en.cfm

This document sets out guidelines for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts co-financed by the Structural Funds or the Cohesion Fund during the programming periods 2000-2006 and 2007- 2013.

When the Commission services detect such irregularities during audits, they must determine the amount of the financial correction applicable. If, when the Commission proposes a correction, the Member State does not agree to make the correction itself in accordance with Article 39(1) of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006, the correction is made by Commission decision under Article 39 paragraph 3 of Regulation (EC) No 1260/1999 or the Article 99 of Regulation (EC) No 1083/2006. These guidelines are intended to help the Commission services to maintain a common approach in dealing with these cases of irregularities. The control authorities of the Member States may also detect irregularities of the same type during their controls. In this case, they are required to make the necessary corrections in accordance with Article 39 paragraph 1 of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006.

The competent authorities in the Member States are recommended to apply the same criteria and rates when correcting irregularities detected by their own services during the checks and audits under Articles 4 and 10 of Regulation (EC) 438/2001 and Articles 60 (b) and 62(1)(a) and (b) of Regulation (EC) No 1083/2006 and other checks, unless they apply yet stricter standards.

The cases described in the table in the Annex are the types of situations found most frequently. Other cases not shown in the table should be dealt with in accordance with the same principles.

The amounts and rates take account of the relevant Community regulations and the guidance documents on financial corrections, in particular:

Community Directives relating to the coordination of procedures for the award of public contracts:

- 92/50/EEC - Public service contracts,
- 93/36/EEC - Public supply contracts,
- 93/37/EEC - Public works contracts,

- 93/38/EEC - Public contracts in the water, energy, transport and communications sectors, 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,
- 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,
- 92/13/EEC - remedies relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,
- 89/665/EEC - review procedures to the award of public supply and public works contracts
- 2004/17/EEC - Public contracts in the water, energy, transport and postal services sectors,
- 2004/18/EEC - Public works contracts, public supply contracts and public service contracts,
- 2005/51/EC - amending Annex XX of Directive 2004/17/EC and Annex VIII of Directive 2004/18/EC,
- Commission Directive 2001/78/CE of 13 September 2001 on the use of standard forms in the publication of public contract notices,

And

Regulation (EC) No 1564/2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC,

Decision 2005/15/EC on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (7.1.2005), the rules and the principles of the Treaty, concerning mainly the free circulation of merchandises (Article 28 of the EC Treaty), the right of establishment (Article 43), the free provision of services (Article 49), the non-discrimination and the equality of treatment, the transparency, the proportionality and the mutual recognition.

Under Article 12 of Regulation (EC) No 1260/1999, operations financed by the Funds must be in conformity with the provisions of the Treaty, with instruments adopted under it and with Community policies, including on the award of public contracts. The same obligations have been provided for the programming period 2007-2013 under Article 9, paragraphs 2 and 5 of the Regulation (EC) No 1083/2006.

Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests states: *Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.*"

Article 39(1) of Regulation (EC) No 1260/99 provides that "The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made shall consist in cancelling all or part of the Community contribution. The same obligations have been provided for the programming period 2007-2013 under Article 98, paragraph 2, of the Regulation (EC) No 1083/2006. Pursuant to Article 39, paragraphs 2 and 3, if the Member State does not make the necessary financial corrections, the Commission may itself decide to make the financial corrections required by cancelling all or part of the contribution of the Funds to the assistance concerned. To determine the amount of a correction, the Commission takes account, in compliance with the principle of proportionality, of the type of irregularity or change and the extent and financial implications of the shortcomings found in the management or control systems of the Member States. The same obligations have been provided for the programming period 2007-2013 under Article 99 of the Regulation (EC) No 1083/2006.

The amounts and rates of financial corrections set out in the table in the Annex are applied to individual cases of irregularities due to non-compliance with the rules on public procurement. Where systemic or repeated irregularities are detected in the application of the rules on public procurement, financial corrections at flat rates or by extrapolation (within the meaning of Article 4 of Regulation No 448/2001 or Article 99 of Regulation (EC) No 1083/2006) can be made to all the operations and/or programmes affected by the irregularities.

The amounts and rates of financial corrections set out in the table in the Annex may be increased where irregular applications for payment are presented to the Commission after the date on which the latter has explicitly informed the Member State, by reasoned opinion based on Article 226 of the Treaty, of an infringement of the public procurement regulations.

1. CONTRACTS SUBJECT TO THE EC PUBLIC PROCUREMENT DIRECTIVES

No	Irregularity		Recommended correction (Note n° 1)
1	Non-compliance with the advertising procedures	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, except in the cases referred to in point 2 below. This is a flagrant disregard of one of the conditions for Community co-financing.	100% of the value of the contract involved
2	Non-compliance with the advertising procedures	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, but was advertised to some extent allowing economic operators located in another Member State access to the contract.	25% of the value of the contract involved
3	Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or the absence of an unforeseen circumstance for complementary works and services or for supplies. (Note No 2)	The main contract was awarded in accordance with the EC Public Procurement Directives, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded without complying with the provisions of the Public Procurement Directives namely the ones related to the negotiated procedures without publication for reasons of extreme urgency brought about by unforeseeable events or for attribution of complementary supplies, works and services.	100% of the value of the contract involved in the cases where the total of supplementary contracts (whether or not formalised in writing) awarded without complying with the provisions of the Public Procurement Directives do not exceed the thresholds of the Directives and the 50% of the value of the original contract the correction may be reduced to 25%.
4	Additional works or services exceeding the limit laid down by the Directives provided in unforeseen circumstances (Note No 2)	The main contract was awarded in accordance with the provisions of the EC Directives, but was followed by one or more supplementary contracts exceeding the value of the original contract by more than 50%. The additional works themselves do not constitute a separate work within the meaning of Article 1(c) of Directive 93/37 or Article 1(2) (a) and 2(b) of Directive 2004/18 or a separate service within the meaning of Article 1(a) of Directive 92/50 or Article 1(2) (a) and 2(d) of Directive 2004/18. In cases where the additional works or services exceed the thresholds of the Directives and constitute a separate work or service, it is necessary to take account of the aggregate value of all the additional works or services for the purposes of the application of the Public Procurement Directives.	100% of the amount exceeding 50% of the value of the original contract

		<p>Where the additional works or services constitute a separate work or service and exceed the thresholds laid down by the Directives, the above mentioned point 1 applies.</p> <p>Where the additional works or services constitute a separate work or service but do not exceed the thresholds laid down by the Directives, point 21 below applies.</p>	
5	Failure to state all the selection and contract award criteria in the tender documents or tender notice	The contract was awarded in compliance with the advertising rules of the Public Procurement Directives, but the tender documents or tender notice failed to state all the selection and/or award criteria or to describe them sufficiently.	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
6	Application of unlawful contract award criteria	The contract was awarded applying unlawful contract award criteria (for example, use of a selection criterion for the award of the contract, noncompliance with the criteria stated by the contracting authority in the tender notice or tender documents or incorrect and/or discriminatory application of contract award criteria).	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
7	unlawful selection and/or contract award criteria laid down in the tender procedure	Cases in which certain operators have been deterred from bidding on account of unlawful restrictions laid down in the tender notice or tender documents (for example, the obligation to already have an establishment or representative in the country or region, or setting technical standards that are too specific and favour a single operator or the possession of experience in the region, etc.).	<p>25% of the value of the contract.</p> <p>(A financial correction of 100% of the value of the contract may be applied in the most serious cases when there is a deliberate intention to exclude certain bidders.)</p>
8	Insufficient or discriminatory definition of the subject-matter of the contract	The description in the tender documents or tender notice is discriminatory or insufficient for bidders to determine the subject-matter of the contract or for the contracting authorities to award the contract.	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
9	Negotiation during the award procedure	The contract was awarded by open or restricted procedure but the contracting authorities negotiated with the bidders during the award procedure, except where the discussions were solely intended to clarify or supplement the content of their bids or specify the obligations of the contracting authorities.	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
10	Reduction in the scope of the contract (Note No 2)	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract without making a proportional reduction in the value of the contract.	Value of the reduction in the scope Plus

		(This correction applies even in cases where the amount of the reduction is used to carry out other works).	25% of the value of the final scope
11	Reduction in the scope of the contract (Note No 2)	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract with a proportional reduction in the value of the contract already carried out. (This correction applies even in cases where the amount of the reduction is used to carry out irregular supplementary contracts).	25% of the value of the final scope
12	Incorrect application of certain ancillary elements	The contract was awarded in compliance with the provisions of the Public Procurement Directives, but without complying with certain ancillary elements, such as publication of the notice of award of the contract. Note: If this type of irregularity is only of a formal nature without potential financial impact, no correction will be made.	2%, 5% or 10% of the value of the contract, according to the seriousness of the irregularity and whether a repeat occurrence

2. CONTRACTS NOT OR NOT FULLY SUBJECT TO THE PUBLIC PROCUREMENT DIRECTIVES (PUBLIC CONTRACTS BELOW THE THRESHOLDS FOR APPLICATION OF THE COMMUNITY DIRECTIVES AND PUBLIC CONTRACTS FOR SERVICES LISTED IN ANNEX I B TO DIRECTIVE 92/50/EEC, ANNEX XVI B TO DIRECTIVE 93/38/EEC, ANNEX II B TO DIRECTIVE 2004/18/EC AND ANNEX XVII B TO DIRECTIVE 2004/17/EC)

The European Court of Justice (ECJ) has confirmed in its case-law that the rules and the principles of the EC Treaty apply also to contracts outside the scope of the Public Procurement Directives.

Contracting entities from Member States have to comply with the rules and principles of the EC Treaty whenever they conclude public contracts falling into the scope of that Treaty. These principles include the free movement of goods (Article 28 of the EC Treaty), the right of establishment (Article 43), the freedom to provide services (Article 49), non-discrimination and equal treatment, transparency, proportionality and mutual recognition (*Commission interpretative communication n^o 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The principles of equal treatment and non-discrimination on grounds of nationality imply an obligation of transparency which, according to the ECJ case-law, "consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed" (*Commission interpretative communication n^o 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The lack of conformity with these rules and principles represents risks for the Community funds. Consequently, financial corrections should be applied to the irregularities detected in the contracts that do not conform or conform partially to the Community Directives. The rates to be applied depending on the type of irregularity are the following:

No	Irregularity Recommended correction		Recommended correction
21	Non-compliance with the requirement of an adequate degree of advertising and transparency(Note No 3)	Contract awarded without adequate competitive tendering, involving noncompliance with the principle of transparency	25% of the value of the contract
22	Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or for complementary works and services brought about unforeseen circumstance. (Note No 2)	The main contract was awarded after adequate competitive tendering, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded without adequate competition in the absence of reasons of extreme urgency brought about by unforeseeable events or (for contracts of works and services) in the absence of unforeseen circumstances justifying them.	25% of the value of the contract(s) attributed without adequate competition.
23	Application of unlawful selection and/or contract award criteria	Application of unlawful criteria which deter certain bidders on account of unlawful restrictions laid down in the tender procedure (for example, the obligation to have an establishment or representative in the country or region or the setting of technical standards that are too specific and favour a single operator).	10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.
24	Breach of the principle of equal treatment	Contracts awarded in accordance with the rules on advertising but where the contract award procedure breaches the principle of equal treatment of operators (for example, when the contracting authorities have made an arbitrary choice of candidates with whom they negotiate or if they give preferential treatment to one of the candidates invited to negotiate).	10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.

Note n° 1. The amount of the financial correction is calculated according to the amount declared to the Commission related to the contract affected by the irregularity. The percentage of the suitable scale applies to the amount of the expenditure declared to the Commission for the contract in question. Practical example: The amount of the expenditure declared to the Commission for a work contract concluded after the application of illegal criteria is 10,000,000€. The applicable correction rate is 25% in agreement with the scale n° 6. The amount to be deducted from the expenditure statement to the Commission is 2,500,000€. Accordingly the Community cofinancing is reduced according to the cofinancing rate of the measure under which the contract in question was financed.

Note n° 2) In the application of these guidelines for the financial correction for non conformity with the rules relating to the public procurement, one limited degree of flexibility can be applied to the modifications of a contract after its attribution provided that (1) the contracting authority does not alter the general economy of the invitation to tender or the terms of reference by modifying an essential element of the attributed contract, (2) modifications, if they had been included in the invitation to tender or in the terms of reference, would not have had any substantial impact on the received offers. The essential elements of the attribution of the contract concern mainly the value of the contract, the nature of the works, the completion period, the terms of payment, and the materials used. It is always necessary to make an analysis on a case by case basis.

Note n° 3. The concept of “sufficient degree of advertising” must be interpreted in the light of Commission interpretative communication No 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, and in particular:

a) The principles of equal treatment and non-discrimination imply an **obligation of transparency** which consists in ensuring, for the benefit of any potential bidder, **a degree of advertising sufficient to enable the contract to be subject to competition**. The obligation of transparency requires that an **undertaking located in another Member State can have access to appropriate information regarding the contract before it is awarded**, so that, if it so wishes, it would be **in a position to express its interest** in obtaining the contract.

b) For individual cases where, because of particular circumstances such as a very modest economic interest at stake, a contract award would be of no interest to economic operators located in other Member States. In such a case the effects on the fundamental freedoms are to be regarded as too uncertain and indirect to warrant the application of standards derived from primary Community law and consequently there is no ground for application of financial corrections.

It is the responsibility of the individual contracting entities to decide whether an intended contract award might potentially be of interest to economic operators located in other Member States. In the view of the Commission, this decision has to be based on an evaluation of the individual circumstances of the case, such as the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographic location of the place of performance.

3. Further reading

DRAFT

B. 5. State aid¹⁰⁰

AREA	Ex ante conditionality	Criteria for fulfilment
5. State aid	The existence of arrangements for the effective application of EU state aid law in the field of the CSF Funds.	<ul style="list-style-type: none">– Arrangements for the effective application of EU State aid rules;– Arrangements for training and dissemination of information for staff involved in the implementation of the funds;– Arrangements to ensure administrative capacity for implementation and application of EU State aid rules.

1. When to assess applicability?

This conditionality is linked to ensuring effective implementation and application of EU State aid law.

This conditionality is relevant and applicable where the support granted under a priority may constitute State aid (incl. *de minimis* aid). In principle, the State aid conditionality applies to all specific objectives determined and for all types of support (including grants and financial instruments) but it will need to be determined case by case taking into account the estimated risk to the effective and efficient achievement of a relevant specific objective.

2. Definitions (currently applicable – some of the regulations and guidelines mentioned below are under revision and might be subject to changes as of 2014)

State aid is defined by Article 107(1) TFEU as "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States.*"

Notification and ex ante authorisation: Member States are obliged to notify the Commission of any plan to grant or alter State aid, in accordance with Article 108(3) TFEU. Member States must not put the aid measure into effect until the Commission has reached a decision.

There are however some exceptions. The following types of aid are exempted from prior notification:

- *de minimis* aid,
- aid granted under the General Block Exemption Regulation (GBER),
- aid granted under an existing scheme¹⁰¹,
- aid for projects entrusted as SGEI in accordance to Commission's SGEI decision¹⁰², and

¹⁰⁰ The text of the table below is based on the Council Compromise text of 24 April 2012.

¹⁰¹ For which the aid amount is below the notification threshold.

¹⁰² http://ec.europa.eu/competition/state_aid/legislation/sgei.html

- aid to which Regulation 1370/2007¹⁰³ applies.

Unlawful (or illegal) aid: New aid put into effect in contravention of Article 108(3) TFEU, which means granted by a Member State without required prior notification to the Commission and/or without having obtained the authorisation by the Commission. Unlawful aid, after examination by the Commission, can be found to be compatible or incompatible with the internal market. Aid which is both unlawful and incompatible aid is subject to a Commission's recovery decision.

Incompatible aid: State aid which the Commission finds to be incompatible with the internal market because it does not fall under one of the exceptions foreseen in the Treaty, in particular Article 107(2) or (3). Incompatible aid may not be granted and, in case it has already been unlawfully granted, it can be subject to a recovery decision.

The *de minimis* Regulation¹⁰⁴ was introduced in order to exempt small aid amounts. It sets a ceiling below which aid is deemed not to fall within the scope of Article 107(1) TFEU and is therefore exempt from the notification requirement laid down in Article 108(3) TFEU.

- Aid of no more than EUR 200 000 granted over a period of three years to one undertaking (including all undertakings of the same group) is not regarded as state aid within the meaning of Article 107(1) TFEU. It is another requirement that the recipient is duly informed that the support is granted as *de minimis* aid.
- A specific ceiling of EUR 100 000 applies to road transport.

General Block Exemption Regulation (GBER)¹⁰⁵: The obligation for Member States for compulsory prior notification is removed for certain types of aid as identified in the GBER. As a result, Member States are able to grant aid that meets the conditions laid down in that Regulation without the formal notification procedure and only have to submit information sheets on the implemented aid.

The GBER simplifies the treatment of State aid measures favouring job creation and boosting competitiveness, i.e. measures in favour of SMEs. It foresees 26 categories of state aid measures, which are considered to be compatible with State aid rules without requiring prior notification to the Commission, as would otherwise be foreseen under TFEU. The GBER also contains a series of conditions which aim to ensure that the aid measures will indeed lead the beneficiary to undertake a project or activity which he would not have engaged in without the aid (incentive effect).

Aid schemes: By complying with all terms of a State aid scheme, the State aid grantor can provide State aid without having it individually notified to the Commission. However, before any aid grantor can apply a scheme, it has to notify the Commission the scheme and the Commission has to approve it (with the exception of block exempted schemes).

Individual aid: notifiable awards of aid on the basis of an aid scheme (for instance because the aid amount is above a notification threshold).

Ad hoc aid: State aid not awarded on the basis of an aid scheme.

¹⁰³ Regulation (EC) No 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road.

¹⁰⁴ This Regulation is subject to changes under the State aid modernisation initiative.

¹⁰⁵ This Regulation is subject to changes under the State aid modernisation initiative.

"Deggendorf" Case (*Case C-188/92, TWD Textilwerke Deggendorf GmbH v Germany, ("Deggendorf") ECR [1994], I-00833*): when assessing a new aid measure, the Commission shall take into account the fact that the beneficiary of this new aid has not fully repaid earlier aid that is subject to a recovery decision. As a result, the Commission may decide not to authorise the Member State to grant otherwise compatible aid until the previous aid has been fully reimbursed.

SME stands for small and medium-sized enterprises – as defined in EU law (Commission Recommendation of 6 May 2003). The main factors determining whether a company is an SME are (1) number of employees and (2) either turnover or balance sheet total.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

3. Source of information for assessment

DG Competition website, State aid legislation:

http://ec.europa.eu/competition/state_aid/legislation/legislation.html

State aid register:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

4. Rationale for the *ex ante* conditionality

Under Article 107 TFEU, State aid is incompatible with the internal market unless its positive effects (in terms of contribution to common interest objectives) outweigh its negative effects aid (in terms of effect on trading conditions and competition in the Union). Member States must ensure that mechanisms are in place to prevent incompatible aid from being granted.

EU State aid rules provide a framework for ensuring that aid is well-designed, targeted at identified market failures and objectives of common interest, and least distortive. In particular, State aid should induce the aid beneficiary to undertake activities it would not have done without the aid (incentive effect) and complement, without replacing, private spending, while keeping the internal market competitive and open.

Given the role of Member States in the proper enforcement of State aid rules in approved or block-exempted measures, it is essential that appropriate training and capacity building are conducted at all administrative levels.

5. Fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p>– Arrangements for the effective application of EU State aid rules in the field of ESI Funds:</p> <ul style="list-style-type: none"> ▪ Measures are in place to prevent the granting of illegal aid, e.g. <ul style="list-style-type: none"> ○ respect of cumulation rules, ○ respect of the "Deggendorf" obligation, ○ amendments into an existing scheme are systematically subject to a verification to ensure that the scheme is still covered by the Commission approval decision or the General block exemption Regulation; ○ In case of repayable assistance provided through financial instruments, measures are in place to ensure that the managing authority, the fund of funds and the bodies implementing the financial instruments comply with State aid rules. The compliance is required at the level of the fund manager, co-investor(s) and final recipients. ▪ Capacity to enforce recovery orders with respect to both illegal and incompatible aid, which covers: <ul style="list-style-type: none"> ○ the possibility to refer, if necessary, to national courts in case of illegal aid and recovery orders ○ effectiveness of timely recovery ▪ Capacity to ensure proper controls of compliance the GBER and approved schemes: <p>There are procedures and guidelines to ensure that granting authorities properly check eligibility and compatibility conditions (incentive effect, limitation of the aid to maximum aid intensities, eligibility conditions of schemes, SME-status of beneficiaries, etc.)</p> ▪ Appropriate knowledge about any aid granted, including <i>de minimis</i> <p>There is a system that makes sure that the reporting obligations are fully</p> 		

<p>complied with and in particular the information of aid granted is complete, accurate and timely (e.g. central registry for aid granted, <i>de minimis</i> registry, transparency mechanisms).</p>		
<p>– <i>Arrangements for training and dissemination of information for staff involved in the implementation of the funds:</i></p> <ul style="list-style-type: none"> ▪ Appropriate training for staff applying EU State aid rules at all relevant levels (e.g. for dedicated desks) has been provided or is planned; ▪ Existence of a system of dissemination of relevant State aid guidance to managing authorities, intermediate bodies, certifying authorities, audit authorities and beneficiaries, and in case of financial instruments also the fund of funds, and the bodies implementing the financial instruments (via websites, direct mail, etc.) ▪ Existence of a system of exchange of information for all staff applying State aid rules linked to the implementation of ESI Funds. 		
<p>– <i>Arrangements to ensure administrative capacity for implementation and application of EU State aid rules:</i></p> <ul style="list-style-type: none"> ▪ Existence of a central body (or a coordinated network of bodies) having the administrative capacity (sufficient number and qualified staff) to give substantive practical and legal advice on application of EU State aid rules and regularly exercising this capacity in practice; ▪ Possibility for the use of technical assistance (e.g. technical guidance documents) is ensured for all bodies involved in applying State aid rules. 		

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- Member States need to comply with State aid rules. A compilation of State aid legislation in force can be found on the following webpage:

http://ec.europa.eu/competition/state_aid/legislation/legislation.html

including:

- (1) Core provisions of the Treaty on the Functioning of the European Union (TFEU);
- (2) General Block Exemption Regulation;
- (3) *de minimis* Regulation;
- (4) horizontal rules applying across all industries, setting out the Commission position on compatibility of aid (e.g. regional aid guidelines (RAG), risk capital guidelines, environmental aid guidelines and R&D&I Framework).
- (5) Sector-specific compatibility rules (e.g. on broadband or transport)

2. Extract of relevant documents

- Core provisions of the Treaty on the Functioning of the European Union

Article 107 TFEU
(ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 108
(ex Article 88 TEC)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109
(ex Article 89 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

3. Further reading

- State Aid Modernisation

Most State aid rules are subject to review in 2013 in the framework of the State Aid Modernisation initiative (SAM), and new rules will enter into force in 2013/2014. Regularly updated information is available on the following webpage:

http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

- Regional aid

http://ec.europa.eu/competition/state_aid/regional_aid/regional_aid.html

DRAFT

B. 6. Environmental legislation¹⁰⁶

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
6. <i>Environmental legislation relating to Environmental Impact Assessment (EIA) and, Strategic Environmental Assessment (SEA)</i>	The existence of arrangements for the effective application of Union environmental legislation related to EIA and SEA.	<ul style="list-style-type: none"> – Arrangements for the effective application of EIA and SEA Directives; – Arrangements for training and dissemination of information for staff involved in the implementation of EIA and SEA Directives; – Arrangements to ensure sufficient administrative capacity.

1. When to assess applicability?

This conditionality is applicable in principle to all OPs involving infrastructure investments (e.g. buildings, roads, ports, airports, waste/water treatment facilities, networks etc.).

However, the applicability of the conditionality depends on the specific objectives determined in the context of each OP and will need to be verified on a case by case basis taking into account the estimated risk to the effective and efficient achievement of a relevant specific objective .

2. Definitions

The EIA Directive foresees that Member States shall adopt all measures necessary to ensure that, before consent is given, public and private projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regards their effects.

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on the following factors: human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage; and the interactions between all these factors.

The SEA procedure can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or programme are identified. The public and the environmental authorities are informed and consulted on the draft plan or programme and the environmental report prepared. As regards plans and programmes which are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s).

The environmental report and the results of the consultations are taken into account before adoption. Once the plan or programme is adopted, the environmental authorities and the

¹⁰⁶ The text of the table is based on the Council Compromise text of 24 April 2012.

public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

The SEA and EIA procedures are very similar, but there are some differences:

- the SEA directive requires the environmental authorities to be consulted at the screening stage;
- scoping (i.e. the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA directive;
- the SEA directive requires an assessment of reasonable alternatives whereas under the EIA the developer chooses the alternatives to be studied;
- the SEA directive requires Member States to ensure that environmental reports are of a sufficient quality.
- under the SEA directive Member States must monitor the significant environmental effects of the implementation of plans/programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action.

3. Source of information for assessment

4. Rationale for the *ex ante* conditionality

Lack of knowledge and experience, as well as inappropriate regulatory arrangements and procedures in place leads to weaknesses in application of EU environmental legislation.

5. Fulfilment and non-fulfilment of criteria (Assessment grid):

CRITERIA FOR FULFILMENT	Criteria fulfilled?	
	YES /NO	Elements of non-fulfilment
<p><i>Arrangements for the effective application of EIA and SEA Directives</i></p> <ul style="list-style-type: none"> ▪ EIA/SEA Directives have been transposed by the Member State. However, the existence of an infringement procedure related to the incorrect / incomplete transposition of the EIA / SEA Directives should not automatically lead to the non-fulfilment of the conditionality, but, on a case-by-case basis, it should be verified whether the infringement affects the implementation of the ESI Funds. ▪ Arrangements are in place to ensure the quality of the information used in the EIA process: <ul style="list-style-type: none"> ○ For instance through national committees or other bodies verifying the EIA documentation, existence of specialized authorities, accredited experts preparing the EIA documentation, capacity building, checklists, circulars, technical know-how, etc. ○ Through early and effective opportunities offered to the public to participate in the environmental decision- making procedures. ▪ Arrangements are in place to give access to justice for the public concerned, including non-governmental organisations. 		
<p><i>Arrangements for training and dissemination of information for staff involved in the implementation of EIA and SEA Directives</i></p> <ul style="list-style-type: none"> ▪ Training for all staff involved in the implementation of EIA and SEA Directives at all relevant levels has been provided. ▪ A system of dissemination and exchange of information is in place for all staff involved in the implementation of EIA and SEA Directives for the implementation of ESI Funds at all relevant levels (e.g. through networks of relevant national/regional authorities, websites, newsletters, etc.) 		

<p><i>Arrangements to ensure sufficient administrative capacity</i></p> <ul style="list-style-type: none"> ▪ Existence of specialised authorities⁸¹ having the administrative capacity (sufficient number and qualified staff) to give advice on application of the EIA/SEA Directives. ▪ Technical assistance (e.g. guidelines, guidance documents, external experts) is ensured for the authorities¹⁰⁷ involved in the implementation of EIA/SEA Directives. 		
--	--	--

DRAFT

¹⁰⁷ The term authorities includes: the competent authorities/services (e.g. transport, energy...), the environmental authorities/services (if other than the competent ones) and other public authorities/services (e.g. road/water agencies). All levels (national/regional/local) should be considered.

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

- **Environmental Impact Assessment (EIA) Directive**

The first EIA Directive of 1985 and its three amendments have been codified by DIRECTIVE 2011/92/EU of 13 December 2011.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>

As a result of a review process, on 26 October 2012, the Commission adopted a proposal for a revised Directive :

<http://ec.europa.eu/environment/eia/pdf/COM-2012-628.pdf>

- **Strategic Environmental Assessment (SEA) Directive (2001/42/EC):**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

2. Extract of relevant documents

3. Further reading

DRAFT

B.7 Statistical systems and result indicators¹⁰⁸

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
7. <i>Statistical systems and result indicators</i>	<p>The existence of a statistical basis necessary to undertake evaluations to assess the effectiveness and impact of the programmes.</p> <p>The existence of a system of result indicators necessary to select actions, which most effectively contribute to desired results, to monitor progress towards results and to undertake impact evaluation.</p>	<ul style="list-style-type: none"> – Arrangements for timely collection and aggregation of data with the following elements is in place: <ul style="list-style-type: none"> – the identification of sources and mechanisms to ensure statistical validation; – arrangements for publication and public availability. – an effective system of results indicators including: <ul style="list-style-type: none"> – the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme; – the establishment of targets for these indicators; – the respect for each indicator of the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data; – procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators.

1. When to assess applicability?

This *ex ante* conditionality applies to all programmes.

2. Definitions

- Arrangements: a decision communicated to the Commission.

- Timely collection and aggregation of data: the data need to be collected respecting a timeframe that allows meeting reporting obligations (normally along with the annual reporting cycle).

¹⁰⁸ The text of the table is based on the Council Compromise text of 24 April 2012.

- Statistical validation: the indicator is based on information collected on all entities / participants concerned by the interventions (statistical population) or on a representative sample of the statistical population. (*This only concerns result indicators.*)
- Publication and public availability: Along with Annual Reporting, result and output, common and OP specific indicators (Art.87.2 of the CPR) are made public in an easily accessible way (preferably on internet), including the name and definition of the indicators, their baseline and target values (if they have them), and cumulative achievement values for each year.
- Effective system of result indicators: existence of result indicators that measure the change sought by policy action in line with Art.24.3 and Art.87.2 of the CPR, meeting the quality criteria listed below.
- Robustness: the indicator is not unduly influenced by extreme values, which means the indicator reflects the intended change and is not sensitive to a high variation of values for a limited number of entities / participants. In technical terms, it means that the (probability) distribution of the indicator values is similar to the (probability) distribution of the individual values in the statistical sample / population.
- Clarity of normative interpretation: the evolution of the result indicator and the trend from baseline to target can be unambiguously interpreted.
- Responsiveness to policy: the value of the result indicator is duly influenced by the operation of (or outputs produced by) the OP.

3. Source of information for assessment

Documentation provided by Member States, including the operational programmes, the *ex ante* evaluation and other documents on statistical system and result indicators.

4. Rationale for the *ex ante* conditionality

Programming documents may contain good indicator and evaluation systems, but without underlying statistics, data collection methods and an evaluation, it is unlikely that meaningful information is produced.

5. Fulfilment and non-fulfilment of criteria (Assessment grid):

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Arrangements for timely collection and aggregation of statistical data with the following elements is in place:</i></p> <ul style="list-style-type: none"> ▪ All operational programmes contain a description of the monitoring system in place to follow their implementation: <ul style="list-style-type: none"> ○ It precises which body is responsible for collecting statistical data for each indicator; ○ It indicates what are the available resources for the responsible body to carry out its tasks; ○ It mentions the appropriate collection and storing arrangements, as well as the deadlines for collecting these data. 		
<p>– <i>the identification of sources and mechanisms to ensure statistical validation:</i></p> <ul style="list-style-type: none"> ▪ For each indicator, the following elements are in place: <ul style="list-style-type: none"> ○ Data source: we already know from where/which institution/which entity the data will be collected for each indicator; ○ Data content: data which will be collected has been defined; ○ Data storage: the format and the location where the data will be kept have been identified and arrangements have been made to prevent data corruption or loss; ○ Data processing has been defined (aggregation, calculation methodology, etc.); ○ The Member State has already defined how data will be transferred before their submission to the Commission (through SFC2014) and has made sure that the subsystems are compatible. ○ There are provisions in place to respect data protection rules. ○ Statistical validation mechanism: For data collected by managing authority, there is evidence that the information is either collected on all entities / participants or on a representative sample (provided that the main parameters of the sample are included in the description). <p>NB: Data coming from officially verified source (e.g. national statistical service, national tax authority, public employment services) are regarded as meeting this criterion.</p>		

<ul style="list-style-type: none"> – <i>arrangements for publication and public availability of aggregated data</i> <ul style="list-style-type: none"> ▪ Information on indicators and aggregated data is available to the public (e.g. websites, etc.) 		
<ul style="list-style-type: none"> – <i>an effective system of results indicators including:</i> <ul style="list-style-type: none"> ▪ Result indicators have been provided for all programmes and respect the following requirements : <ul style="list-style-type: none"> – <i>the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme</i> <ul style="list-style-type: none"> ○ The selection of result indicators is justified in relation to policy actions financed by the programme; ○ It is based on what motivates the selection of policy actions financed by the programme; ○ A description of this procedure is available, e.g. within the <i>ex ante</i> evaluation of the operational programme (submitted along with the OP). – <i>the establishment of targets for these indicators</i> <ul style="list-style-type: none"> ○ Qualitative or quantitative targets have been identified for each result indicator; ○ These targets are easily understandable, unambiguously measurable, reflect a broad consensus of stakeholders and are consistent in their approach (i.e. all measures are working towards the same direction). – <i>the respect for each indicator of the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data</i> <ul style="list-style-type: none"> ▪ Each indicator respect the following criteria: <ul style="list-style-type: none"> ○ They are robust: the indicator is not unduly influenced by extreme values, which means that the indicator reflects the intended change and is not sensitive to a high variation of values for a limited number of entities/participants; ○ They are based on a statistical validation: they are based on information collected on all entities/participants concerned by the interventions (statistical population) or on a representative sample of the statistical population; ○ Clarity of normative interpretation: the evolution of result indicator and the trend from baseline to target can be unambiguously interpreted. ○ Responsiveness to policy: the value of each result indicator is duly influenced by the operation of (or outputs produced by) the OP; ○ Timely collection and aggregation of data: the data needs to be collected respecting a 		

<p>timeframe that allows meeting reporting obligations (normally along with the annual reporting cycle).</p> <ul style="list-style-type: none"> - <i>procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators</i> ▪ There is a description of how data necessary to evaluate the contribution of the operations to the specific objectives will be collected and made available on time. ▪ There are special arrangements made to collect data needed to carry out impact evaluation (e.g. data on non-participants). 		
---	--	--

DRAFT

Annex: BACKGROUND INFORMATION

1. EU basis for including the *ex ante* conditionality in the CPR proposal

Obligations derive from the Regulations governing the operation of European Structural and Investments Funds related to result indicators.

2. Extracts of relevant documents

3. Further reading