

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT**  
STRUCTURAL AND COHESION POLICIES **B**

Agriculture and Rural Development

Culture and Education

Fisheries

**Regional Development**

Transport and Tourism

**EX-ANTE  
CONDITIONALITIES  
IN COHESION POLICY**

**NOTE**





**DIRECTORATE-GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES**

**REGIONAL DEVELOPMENT**

# **EX-ANTE CONDITIONALITIES IN COHESION POLICY**

**NOTE**

This document was requested by the European Parliament's Committee on Regional Development.

## **AUTHORS**

*CSIL Centre for Industrial Studies* - Gelsomina Catalano, Massimo Florio, Julie Pellegrin, Davide Sartori

*PPMI Public Policy and Management Institute* - Haroldas Brozaitis

## **RESPONSIBLE ADMINISTRATOR**

Kathrin Maria Rudolf  
Policy Department B: Structural and Cohesion Policies  
European Parliament  
B-1047 Brussels  
E-mail: [poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

## **EDITORIAL ASSISTANCE**

Nóra Révész

## **LINGUISTIC VERSIONS**

Original: EN.  
Translations: DE, FR.

## **ABOUT THE PUBLISHER**

To contact the Policy Department or to subscribe to its monthly newsletter please write to:  
[poldep-cohesion@europarl.europa.eu](mailto:poldep-cohesion@europarl.europa.eu)

Manuscript completed in December 2012.  
Brussels, © European Union, 2012.

This document is available on the Internet at:  
<http://www.europarl.europa.eu/studies>

## **DISCLAIMER**

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.



**DIRECTORATE-GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES**

**REGIONAL DEVELOPMENT**

**EX-ANTE CONDITIONALITIES IN  
COHESION POLICY**

**NOTE**

**Abstract**

This note provides an overview and assessment of the ex-ante conditionalities, fulfilment criteria and delivery mechanisms outlined in the draft Common Provisions Regulation adopted by the European Commission. It encompasses relevant programme management phases and illustrates the roles of the actors involved in the multilevel governance system of EU cohesion policy. The aim is to identify critical aspects of the proposed ex-ante conditionality mechanism and to contribute to the current debate

IP/B/REGI/FWC/2010-002/LOT1/C2/SC1

December 2012

PE 474.554

EN



# CONTENTS

<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
<b>LIST OF TABLES</b>	<b>7</b>
<b>LIST OF FIGURES</b>	<b>7</b>
<b>LIST OF BOXES</b>	<b>7</b>
<b>EXECUTIVE SUMMARY</b>	<b>9</b>
<b>INTRODUCTION TO EX-ANTE CONDITIONALITIES</b>	<b>13</b>
<b>1. AN ASSESSMENT OF THE PROPOSED MECHANISM: GENERAL PRINCIPLES</b>	<b>17</b>
<b>1.1. The definition of the ex-ante conditionalities</b>	<b>17</b>
1.1.1. The choice of the ex-ante conditionalities	17
1.1.2. The number of ex-ante conditionalities	18
1.1.3. The link with Cohesion Policy objectives and the effectiveness of the funds	19
<b>1.2. The criteria for the assessment of the fulfilment of the ex-ante conditionalities</b>	<b>22</b>
<b>1.3. Sanction mechanism</b>	<b>22</b>
<b>2. AN ASSESSMENT OF THE PROPOSED MECHANISM: PRACTICAL IMPLICATIONS</b>	<b>25</b>
<b>2.1. Self-assessment by Member States</b>	<b>25</b>
2.1.1. Assessing the applicability of the ex-ante conditionalities	26
2.1.2. Assessing the fulfilment of the ex-ante conditionalities	26
2.1.3. Performing the self-assessment: the role of national and regional authorities	28
<b>2.2. European Commission's consistency check</b>	<b>28</b>
<b>2.3. Reporting on the progress achieved</b>	<b>29</b>
<b>2.4. Timeframe and consequence of (non) fulfilment of the ex-ante conditionalities</b>	<b>30</b>
<b>3. FOCUSING ON THREE EX-ANTE CONDITIONALITIES</b>	<b>33</b>
<b>3.1. General ex-ante conditionality No. 5</b>	<b>34</b>
3.1.1. Description and rationale for the ex-ante conditionality	34
3.1.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria	34
3.1.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto	35
<b>3.2. Thematic ex-ante conditionality No. 3 (including aspects of No. 8.2)</b>	<b>35</b>
3.2.1. Description and rationale for the ex-ante conditionality	35
3.2.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria	36

3.2.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto	37
<b>3.3. Thematic ex-ante conditionality No. 4</b>	<b>38</b>
3.3.1. Description and rationale for the ex-ante conditionality	38
3.3.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria	38
3.3.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto	39
<b>4. CONCLUSIONS AND RECOMMENDATIONS</b>	<b>41</b>
<b>REFERENCES</b>	<b>43</b>
<b>ANNEX I: AN OVERVIEW OF THE OPERATIONAL ARCHITECTURE</b>	<b>51</b>
<b>ANNEX II: STATUS OF AMENDMENTS QUOTED IN THE REPORT</b>	<b>55</b>
<b>ANNEX III: AN IN DEPTH ANALYSIS OF THREE EX-ANTE CONDITIONALITIES</b>	<b>57</b>



## LIST OF ABBREVIATIONS

<b>BER</b>	Building Energy Rating
<b>CC</b>	Competition Council
<b>CF</b>	Cohesion Fund
<b>CoR</b>	Committee of the Regions
<b>CPR</b>	Common Provisions Regulation
<b>CSF</b>	Common Strategic Framework
<b>DG</b>	Directorate-General of the European Commission
<b>DG REGIO</b>	European Commission Directorate-General for Regional and Urban Policy
<b>DH</b>	District Heating
<b>EAFRD</b>	European Agricultural Fund for Rural Development
<b>EC</b>	European Commission
<b>EGTC</b>	European Grouping of Territorial Co-operation
<b>EIA</b>	Environmental Impact Assessment
<b>EMFF</b>	European Maritime and Fisheries Fund
<b>EP</b>	European Parliament
<b>EPBD</b>	Directive on the Energy Performance of Buildings
<b>ERDF</b>	European Regional Development Fund
<b>ESF</b>	European Social Fund
<b>EU</b>	European Union
<b>GPP</b>	Green Public Procurement
<b>ICT</b>	Information and Communication Technology
<b>IMF</b>	International Monetary Fund
<b>ISPRA</b>	Istituto Superiore per la Protezione e la Ricerca Ambientale (National Institute for the environmental protection and research)

<b>MSs</b>	Member States
<b>NEEAPs</b>	National Energy Efficiency Action Plans
<b>NGA</b>	Next Generation Access
<b>NMS</b>	New Member States
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OP</b>	Operational Programme
<b>PCs</b>	Partnership Contracts
<b>R&amp;D</b>	Research and Development
<b>SBA</b>	Small Business Act
<b>SEA</b>	Strategic Environmental Assessment
<b>SEAI</b>	Sustainable Energy Authority of Ireland
<b>SF</b>	Structural Funds
<b>SMEs</b>	Small and Medium-sized Enterprises
<b>TEN</b>	Trans European Network
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>ToR</b>	Terms of Reference
<b>UN</b>	United Nations
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change

## LIST OF TABLES

Table 1	
Key elements to be included in legal, strategic and operational documents	53
Table 2	
Status of amendments tabled within the Committee on Regional Development of the European Parliament related to Art. 17	55
Table 3	
Amendments adopted in the Mandate (11 July 2012)	56
Table 4	
The ex-ante conditionalities analysed and the corresponding fulfilment criteria	57
Table 5	
Rationale for introducing the ex-ante conditionalities under analysis	59
Table 6	
Ex-ante conditionality No.4: the transposition of the EU directives in the three Member States	63

## LIST OF FIGURES

Figure 1	
Timeline and concise description of the operational architecture for the ex-ante conditionalities	9
Figure 2	
Timeline and concise description of the operational architecture for the ex-ante conditionalities	15

## LIST OF BOXES

Box 1	
Examples of factors expected to achieve Cohesion Policy objectives	21



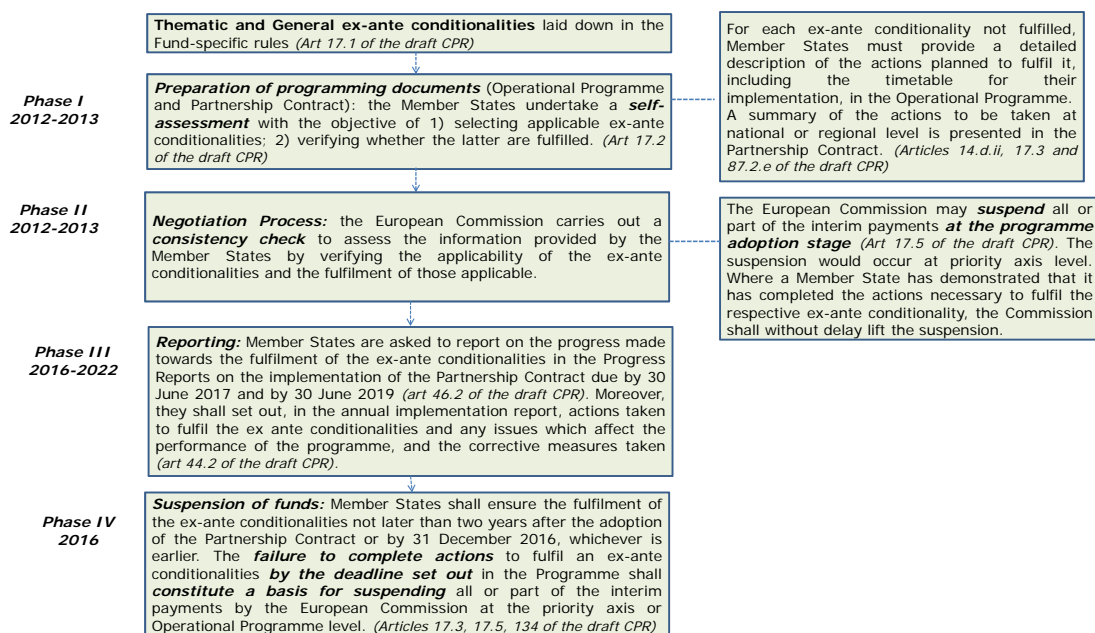
## EXECUTIVE SUMMARY

This note provides an overview and assessment of the ex-ante conditionalities, fulfilment criteria and delivery mechanisms outlined in Annex IV and Art. 17 of the draft Common Provisions Regulation (CPR).<sup>1</sup> It draws on a literature review of available policy documents concerning Cohesion Policy and desk research including case studies of three selected ex-ante conditionalities in three selected countries.<sup>2</sup>

In the context of the reform of Cohesion policy, a series of ex-ante conditionalities are defined which Member States are required to comply with in order to avoid the suspension of payments. These ex-ante conditionalities are expected to be a driver of change for the regions that are lagging behind in complying with EU requirements and push them to introduce important reforms for improving the effectiveness of their interventions. Eleven thematic ex-ante conditions are directly linked to the thematic objectives of the Cohesion Policy, while seven general conditions reflect cross-cutting issues that are relevant to the achievement of the EU 2020 agenda.<sup>3</sup> Overall, they cover three types of prerequisites: *i)* the transposition of EU legislation into national law; *ii)* the adoption of national or regional strategic frameworks; *iii)* the establishment of specific measures or administrative structures in order to guarantee the sound management of funds. To each ex-ante conditionality is associated a series of “criteria for fulfilment”.

An overview of the most important steps and of the actors involved in the implementation of the ex-ante conditionalities mechanism is provided in the figure below.

**Figure 1: Timeline and concise description of the operational architecture for the ex-ante conditionalities**



Source: Authors.

<sup>1</sup> Please note that "Annex IV" was renumbered by COM(2012)496 final to "Annex V".

<sup>2</sup> The research for this note was undertaken in the period May-July 2012. However, an effort was made to take the outcome of the vote of the Committee on Regional Development of July 2012 into account where relevant (Annex II and recommendations).

<sup>3</sup> The mechanism applies to all programmes funded by the Structural and Cohesion funds except those under the Territorial Cooperation objective. Ex-ante conditionalities also applies to the other CSF funds i.e., the European Agricultural Fund for Rural Development and the future European Maritime and Fisheries Fund.

The assessment carried out in this study shows that the mechanism proposed by the European Commission, although welcome in principle by Member States, is characterised by shortcomings related to the intrinsic features of the mechanism. It is also affected by a series of uncertainties concerning the conditions under which it will be implemented. As a result, it is not clear whether the mechanism will produce the desired results or even have counterproductive effects. In the following, the most critical issues are highlighted.

### **Definition of the ex-ante conditionalities**

First, controversial positions are held with regard to the areas covered by the proposed ex-ante conditionalities. There is concern that the list of ex-ante conditionalities might not be necessarily entirely suited to the specificities of the context to which it is expected to be applied. Also, a large number of ex-ante conditionalities might lead to a disproportionate administrative burden and make them inapplicable, especially in Member States and Regions with smaller allocations and / or with a complex multilevel-governance structure. Finally, the link between the ex-ante conditionalities and the objectives of the Cohesion Policy is not always clear, especially in the case of general ex-ante conditionalities but also of certain thematic ex-ante conditionalities that are broadly defined. As a result, the applicability of these ex-ante conditionalities to Operational Programmes is not straightforward.

### **Modalities of the self-assessment**

During the self-assessment exercise carried out at Member State level, ex-ante conditionalities applicable to the objectives of Operational Programmes are selected out of the list proposed in Annex IV of the draft CPR, and a first check of their fulfilment is done. For those conditionalities not fulfilled, a set of actions to take in order to respect the fulfilment criteria are decided, together with a time table for their implementation. The European Commission then carries out a consistency check of the information provided by the Member States.

The appropriateness of the criteria proposed for the fulfilment of the ex-ante conditionalities is an issue. Some criteria have been too broadly defined, are too many and/or appear to be insufficient to guarantee the effects expected from a fulfilled ex-ante conditionality.

In some cases, the level at which the self-assessment should be performed is not clear and this might lead to confusion concerning the roles of regional and national authorities. This is the case of certain ex-ante conditionalities for which responsibilities lie with the Member States such as the transposition of EU directives.

Also, the self-assessment process might deliver mixed results if countries and regions use different systems of measurement and quality standards.

### **Principle and modalities of the suspensions of payment**

If there is a substantial non-fulfilment of one or more of the criteria related to the selected ex-ante conditionalities and if there is a high risk of a negative impact on the achievement of the specific objectives to which ex-ante conditionalities is related, the European Commission can envisage the suspension of payments at the stage of the adoption of a programme. As a last step, the European Commission checks whether the actions agreed to respect the fulfilment criteria of those unfulfilled conditionalities have been implemented within the timetable agreed (and no later than the end of 2016). If these actions are implemented i.e., that the criteria are respected, the corresponding ex-ante conditionality

is considered to be fulfilled. On the contrary, if these actions have not been implemented within the agreed timespan, a suspension of payment may take place (Art. 17.5 of the draft CPR).

First, the introduction of a possibility of suspension of funds might trigger “strategic or conservative behaviour” or a “compliance approach” among MSs. The risk of a formalistic approach is reinforced by the fact that the assessment is limited to check whether actions foreseen in order to respect the fulfilment criteria are simply implemented without further consideration for the effectiveness of the latter.

Second, the specific modalities of the suspension of funds, especially during programme implementation, are not straightforward. For a start, there is some doubt about whether the suspension takes place automatically or whether it is just a possibility – and if the latter is true, the question arises as to the degree of discretion which the European Commission will use when suspending payments (e.g., will it take into consideration external constraints or the fact that some ex-ante conditionalities might be easier to fulfil than others?). Another critical issue is the level at which the suspension of funds is applied. The suspension of funds at the level of the priority axis or the Operational Programme seems rather questionable when the responsibility for the compliance lies at the national level as in the case of the transposition of EU directives. Yet another difficulty has to do with the time span allowed to meet the fulfilment criteria. In some cases, the implementation of the agreed actions might need more time than in others and more generally some ex-ante conditionalities address broad policy reforms that take time to materialise.

Overall, the fulfilment of ex-ante conditionalities disproportionately affects countries with complex administrative structures and large regional disparities and as such could worsen existing regional imbalances.

On this basis, the following recommendations are put forward:

- A clear reference to the objectives of the Cohesion Policy pursued by ex-ante conditionalities, especially general ex-ante conditionalities, is necessary to avoid the risk of a pure compliance approach by the Member States.
- Appropriate ex-ante conditionalities should be selected according to the effective needs of the Regions/Member States as well as to their relevance for the achievement of programme objectives.
- During the negotiation process it is important to identify an adequate number of general and thematic conditionalities applicable to the Operational Programme in order to avoid an increase in the administrative burden.
- The roles of national and regional authorities in the self-assessment procedure should be made clearer.
- Regional authorities should be involved in order to achieve consensus on the actions to be taken in order to fulfil the ex-ante conditionalities.
- The provision of national guidance on how self-assessment should be carried out is necessary.

- A thorough review of the definition of fulfilment criteria is needed in order to avoid misunderstandings in their interpretation and ensure that they effectively reflect conditions necessary for the effective implementation of Cohesion Policy.
- Differentiated timeframe for the fulfilment of ex-ante conditions should be adopted.
- More clarifications are needed to explain on which basis financing will be suspended, especially during implementation.
- More support (through technical assistance) should be given to Regions lagging behind to help them in the assessment and fulfilment of the ex-ante conditionalities.

Some of these recommendations are reflected in amendments tabled within the Committee on Regional Development of the European Parliament and subsequently adopted (e.g., concerning the link between ex-ante conditionalities and the effective implementation of Structural funds, or the need to reinforce administrative capacities of local and regional actors).



## INTRODUCTION TO EX-ANTE CONDITIONALITIES

### KEY FINDINGS

- Ex-ante conditionalities are not new in Cohesion Policy. However, this is the first time that the European Commission has proposed a **comprehensive set of preconditions** which Member States are required to comply with in order to avoid suspension of payments.
- The aim of ex-ante conditionalities is to ensure that all pre-conditions necessary for the **effective use of funds** are in place.
- **Eleven thematic conditionalities** are proposed which are directly linked to the thematic objectives of the Cohesion Policy, while **seven general conditionalities** are related to relevant cross-cutting issues.

Ex-ante conditionality is not a new concept within the framework of Cohesion Policy. Over previous programming periods, a number of conditionality mechanisms have been introduced to maximise the efficiency and the effectiveness of interventions. In the current programming period, *compliance with public procurement rules*,<sup>4</sup> *State aid*<sup>5</sup> and *environmental acquis*<sup>6</sup> are a pre-condition to receive financing from the Cohesion and Structural Funds (ERDF, ESF, and CF). In addition, an ex-ante compliance assessment procedure has been adopted making access to funding conditional upon the satisfactory establishment of management and control systems.<sup>7</sup> However, these measures are not applied systematically to all EU funds<sup>8</sup> and their link with the effectiveness of interventions is not specifically defined in Regulation 1083/2006.

The idea of reinforcing the use of conditionalities and incentives in post-2013 Cohesion Policy was first suggested by the European Commission in its proposal to reform EU economic governance during the economic and financial crisis. It proposed introducing ex-

<sup>4</sup> Member States and the Commission are allowed to make corrections to the expenditure co-financed by the funds in the case of non-compliance with the rules on public procurement. The corrections applied consist of cancelling all or part of the public contribution to the Operational Programmes on the basis of the nature and gravity of the irregularity detected (EC Regulation 1083/2006, Art. 98 and Art. 99).

<sup>5</sup> Structural and other EU policies must be compliant with European Union rules on State aid, hence they cannot finance measures responding to the criteria listed in Article 107 of the Treaty on the Functioning of the European Union (TFEU), ex-Article 87(1) of the Treaty establishing the European Union (TEC). See Art. 101 of the EC Regulation 1083/2006 and European Commission (2010a).

<sup>6</sup> This ranges from the general provision concerning sustainable development (EC Regulation 1083/2006, Art. 17) to the more specific requirement asking Member States to provide a detailed analysis of the environmental impacts produced by major investment projects co-financed by ERDF and/or CF (EC Regulation 1083/2006, Art. 40).

<sup>7</sup> The ex-ante compliance assessment procedure consists of preparing a description of the systems (covering the organisation and procedures of the managing and certifying authority, intermediate bodies and the audit authority) and a report assessing the compliance of management and control systems with requirements established at EU level (see EC Regulation 1083/2006 Art. 71). The assessment carried out by an independent audit authority (within 12 months of programme approval) is then checked by the Commission. In the case of reservations, only after the necessary corrective measures have been taken and the Commission has received sufficient assurance that the control system fully meets the regulatory requirements, do the interim payments start. See European Commission (2010a), p.80.

<sup>8</sup> For instance, while compliance with public procurement rules, State aid and environmental acquis are a precondition to financing for all three structural policies (Cohesion, Rural development and Fisheries policies), the compliance assessment procedure only involves the Cohesion and Fisheries Policy. See European Commission (2010a), p. 15.

ante conditionalities which make Cohesion Policy disbursement conditional on structural and institutional reforms that are directly linked to the operation of Cohesion Policy, with a view to improving its effectiveness and efficiency<sup>9</sup>. These ideas were further clarified in the Budget Review<sup>10</sup> Communication and the Fifth Cohesion Report<sup>11</sup>, as well as by a sector-specific EU Task Force on Conditionalities<sup>12</sup>. As the conclusion of the Fifth Cohesion Report highlights, the main purpose of the new conditionality provisions *"would be to help countries and regions to tackle the problems that past experience has shown to be particularly relevant to policy implementation"*<sup>13</sup>, which include, for instance, the transposition of specific EU legislation, the financing of strategic EU projects, as well as administrative, evaluative and institutional capacity.

The rationale for introducing systematic and better defined ex-ante conditionalities for the coming programming period thus stems from the need to ensure that the pre-conditions necessary for the effective and efficient use of the concerned fund are put in place. The mechanism applies to the five funds covered by the Common Strategic Framework (CSF): the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the future European Maritime and Fisheries Fund (EMFF). According to Art. 17.6 of the draft CPR ex-ante conditionalities shall not apply to Programmes under the European territorial cooperation goal.

A number of thematic and general ex-ante conditionalities are laid out, along with the criteria for their fulfilment, in Annex IV of the draft Common Provisions Regulation (CPR).<sup>14</sup> Thematic conditionalities are related to the eleven thematic objectives (see Art. 9 of the draft CPR) which shall be supported by each CSF Fund in accordance with its mission in order to contribute to the European Union's strategy for smart, sustainable and inclusive growth. Seven general conditionalities are alternatively related to cross-cutting issues that are relevant to the achievement of the EU 2020 agenda. According to Art 17.1 of the draft CPR, ex-ante conditionalities shall be defined for each CSF Fund in the Fund specific rules. Broadly speaking, the list of the ex-ante conditionalities proposed by the European Commission includes three types of prerequisite: *i)* the transposition of EU legislation into national law; *ii)* the adoption of national or regional strategic frameworks; *iii)* the establishment of specific measures or administrative structures in order to guarantee the sound management of the funds. To each ex-ante conditionality is associated a series of "criteria for fulfilment". If the criteria are met, the corresponding ex-ante conditionality is deemed to be fulfilled.

The mechanisms of the ex-ante conditionalities are briefly sketched out below, and the different steps involved summarised in Figure 2 (for a detailed description, see Annex I). First, during a self-assessment exercise carried out at Member State level, ex-ante conditionalities applicable to the objectives of Operational Programmes are selected out of the list proposed in Annex IV of the draft CPR, and a first check of their fulfilment is done. For those conditionalities not fulfilled, a set of actions to take in order to respect the fulfilment criteria are decided, together with a time table for their implementation. The European Commission then carries out a consistency check of the information provided by the Member States. If there is a substantial non-fulfilment of one or more of the criteria

<sup>9</sup> European Commission (2010d), p.9.

<sup>10</sup> European Commission (2010c).

<sup>11</sup> European Commission (2010b) and European Commission (2010e)

<sup>12</sup> European Commission (2011d) and European Commission (2011e).

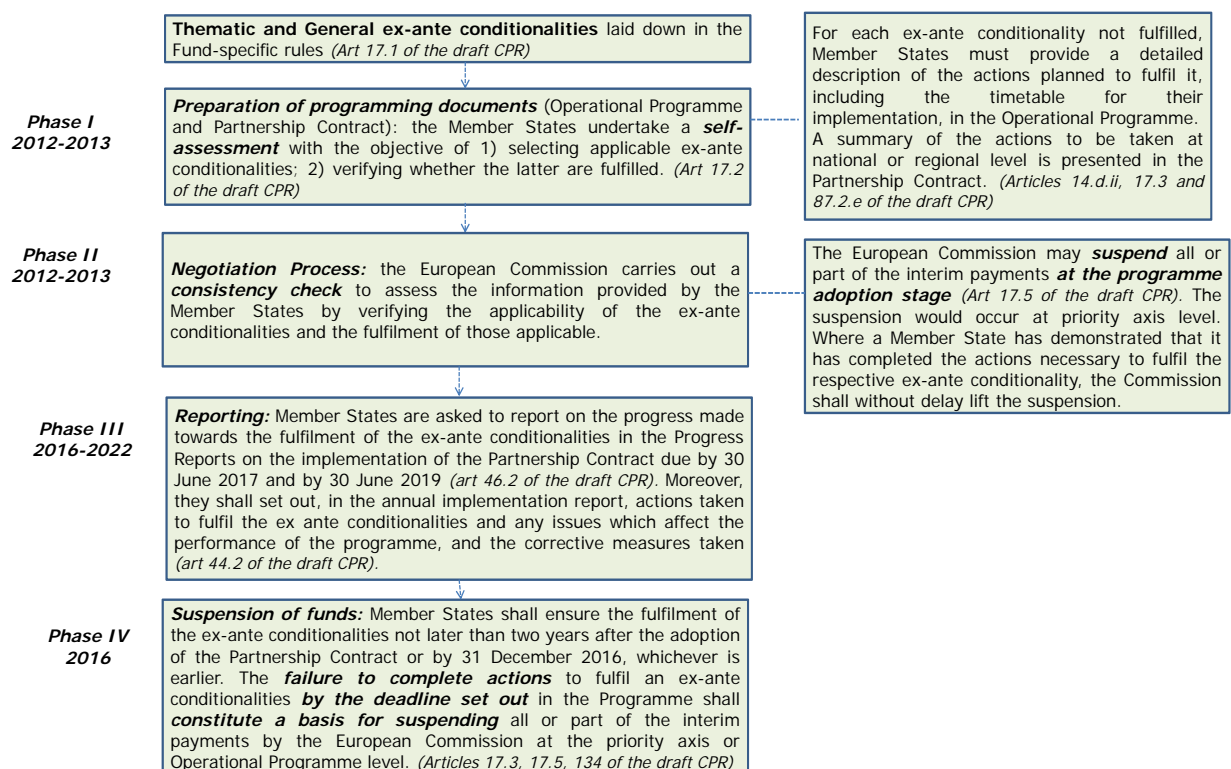
<sup>13</sup> See European Commission (2010b), p. XXVI and European Commission (2010e), p.4.

<sup>14</sup> European Commission (2011h). Please note that "Annex IV" was renumbered by COM(2012)496 final to "Annex V".

related to the selected ex-ante conditionalities and if there is a high risk of a negative impact on the achievement of the specific objectives to which ex-ante conditionalities is related, the European Commission can envisage the suspension of payments.<sup>15</sup> As a last step, the European Commission checks whether the actions agreed to respect the fulfilment criteria of those unfulfilled conditionalities have been implemented within the timetable agreed (and in any case no later than the end of 2016, Art 17.3 of the draft CPR). If these actions are implemented i.e., that the criteria are respected, the corresponding ex-ante conditionality is considered to be fulfilled. On the contrary, if these actions have not been implemented within the agreed timespan, a suspension of payment may take place (Art. 17.5 of the draft CPR).

Overall, the mechanism foresees two occasions in which access to funds can be suspended. At the stage of the adoption of programmes, the application of the mechanism in principle opens access to funding and the suspension of payment is a possibility that the European Commission would consider in extreme situations. In a second occasion, the mechanism yields a suspension of payment which can apply if the fulfilment criteria are not met.

**Figure 2: Timeline and concise description of the operational architecture for the ex-ante conditionalities**



Source: Authors<sup>16</sup>.

In what follows, an assessment of the proposed mechanism is provided on the basis of the evidence collected from a documentary analysis and a comparative analysis of three selected conditionalities in Lithuania, Italy and Ireland (see Chapter 3 for more details).

<sup>15</sup> The suspension concerns all or part of the interim payments to a priority of the affected programme. The Commission would have to set out the grounds and justification for the suspension as part of the suspension clause within the decision of adopting the programme. See Council of the European Union (2012b), p. 4.

<sup>16</sup> On the basis of European Commission (2011h), European Commission (2012a), Council of the European Union (2012a), Council of the European Union (2012b).

Reference is also made to economic development literature in order to shed light on how certain aspects are dealt with in existing ex-ante conditionalities systems (IMF and World Bank). Firstly, an assessment of the principles underlying the proposed arrangement is presented in general terms (Chapter 1). Subsequently, the practical implications for the implementation of the envisaged mechanism are reviewed (Chapter 2).<sup>17</sup>

---

<sup>17</sup> The research for this note was undertaken in the period May-July 2012. However, an effort was made to take the outcome of the vote of the Committee on Regional Development of July 2012 into account where relevant (Annex II and recommendations).

## 1. AN ASSESSMENT OF THE PROPOSED MECHANISM: GENERAL PRINCIPLES

### KEY FINDINGS

Although the rationale for introducing ex-ante conditionalities is generally welcomed by Member States the following issues are discussed:

- The areas covered by the ex-ante conditionalities might be suboptimal. Conditionalities are context-specific: some conditionalities might be more appropriate to meet the needs of certain countries than others;
- A high number of conditionalities might overload governments: they are hard to monitor and risk being counterproductive;
- The link between the ex-ante conditionalities and Cohesion Policy objectives is not always obvious. The appropriateness of certain conditionalities towards ensuring the effectiveness and the efficiency of Cohesion Policy interventions is debatable;
- The choice and definition of the fulfilment criteria are not always straightforward;
- Possibility of suspension of payments by the European Commission might trigger two kinds of behaviour among relevant actors: “precautionary and strategic behaviour” or a “pure compliance approach”.

The concept of ex-ante conditionality is welcomed by the majority of Member States as it will contribute to improving Cohesion Policy performance by ensuring that a number of prerequisites which allow for more efficient interventions are met before funding starts.<sup>18</sup> However, concerns have been raised with regard to the general principles underlying the adoption of ex-ante conditionalities. For example, Annex IV of the draft CPR has come under criticism, especially with regard to the definition of the ex-ante conditionalities and the criteria proposed for their fulfilment. For each of these issues, the different points of view are reported in what follows, while the assessment of the more practical implications for the implementation of the mechanism is presented in Chapter 2.

### 1.1. The definition of the ex-ante conditionalities

The choice of the ex-ante conditionalities, their number and their relationship to Cohesion Policy objectives are the three most debated issues.

#### 1.1.1. The choice of the ex-ante conditionalities

Controversial positions are held with regard to the areas covered by the proposed thematic and general ex-ante conditionalities. Some think that the range of areas covered is too large, while others wish to broaden the scope of the ex-ante conditionalities and to include areas that are not currently covered but are, nonetheless, relevant.

<sup>18</sup> The Polish Ministry of Regional Development - Department of Structural Policy Coordination (2012), p. 70.

An IEEP study<sup>19</sup> is among the proposals for further extending the scope of the conditionalities. For instance, it suggests linking thematic conditionality No. 5 concerning risk prevention and management of natural disasters to the implementation of Floods Directive 2007/60/EC.<sup>20</sup> It also suggests that the general conditionality system could include the promotion of Green Public Procurement (GPP) in the implementation of EU funded programmes and projects.

Adjustments to Annex IV of the draft CPR proposal are demanded by the Committee on Transport and Tourism of the European Parliament.<sup>21</sup> For instance, revisions are proposed with regard to thematic ex-ante conditionality No. 7.1 on road transport,<sup>22</sup> which include as a requirement the transposition of EU Directive 2011/76/EU on charging heavy goods vehicles for the use of certain infrastructures.<sup>23</sup> A further conditionality is suggested by the UEAPME – European Association of Craft and SMEs – with regard to the thematic objective Research and Innovation. It deals with support for innovation in and by small and micro enterprises.<sup>24</sup>

There is also concern that the list of ex-ante conditionalities might not be necessarily entirely suited to the specificities of the context to which it is expected to be applied. Evidence from the practice of development cooperation confirms that existing ex-ante conditionality systems are context-specific. For instance, policy-based loan conditions applied by the World Bank do not follow a standard blueprint, but differ by type of country. Conditionality in the better performing countries focuses largely on structural policies (such as financial stability, the competitive environment for the private sector, trade and environmental sustainability). By contrast, conditionality in poor performing countries has a stronger focus on public sector management and institution building, including property rights, quality of budgetary and financial management, efficiency of revenue mobilisation, quality of public administration and transparency, accountability and corruption in the public sector.<sup>25</sup> A further example is provided by the IMF, which modernised its conditionality framework in 2009 by ensuring that conditions are focused and tailored to member countries' different policies and economic starting points.<sup>26</sup> For Cohesion Policy, a "menu" of different ex-ante conditionalities is proposed from which Member States can in principle pick up the most appropriate ones. However, the proposed list might still not be optimally suited to the specific needs of some Member States.

### 1.1.2. The number of ex-ante conditionalities

Strictly related to the previous issue, there is concern about finding the optimal number of conditionalities to adopt. The Polish Ministry of Regional Development points out that

<sup>19</sup> Institute for European Environmental Policy (2012), p. 28.

<sup>20</sup> This Directive requires Member States to assess whether all water courses and coast lines are at risk from flooding, to map the flood extent and assets and humans at risk in these areas, and to take adequate and coordinated measures to reduce this flood risk.

<sup>21</sup> European Parliament (2012a), pp. 18-19.

<sup>22</sup> The thematic ex-ante conditionality No.7.1 on road transport requires the existence of a comprehensive transport plan that contains an appropriate prioritisation of investment in the core of Trans European Network of Transport (TEN-T), in the comprehensive network and in secondary connectivity (including public transport at regional and local level).

<sup>23</sup> Consistently with the application of this Directive, the Committee suggests including among the criteria for the assessment of the fulfilment of this ex-ante conditionality the requirement of national road user charging systems (including the recovery of the costs for infrastructure, noise and air pollution) to be applied to all motorways from the beginning of their operation.

<sup>24</sup> Criteria for the fulfilment of the conditionality proposed by the UEAPME include i) measures supporting information, advice and cooperation between companies and research poles and clusters; ii) support for the creation of innovation advisors in the intermediary organisations; iii) support for patenting.

<sup>25</sup> Koeberle, S. G. (2004), pp. 10-11.

<sup>26</sup> <http://www.imf.org/external/np/exr/facts/conditio.htm>.



Member States are particularly concerned about the large number of ex-ante conditionalities proposed in Annex IV of the draft CPR. In particular, Member States' reservations stem from the risk that the large number of ex-ante conditionalities might lead to a disproportionate administrative burden and make them inapplicable, especially in Member States and Regions with smaller allocations.<sup>27</sup> Evidence from case studies shows that a high number of ex-ante conditionalities may penalise Member States with a complex and decentralised administrative structure, as this requires systematic fulfilment of conditionalities from numerous layers of the national administration. The main emerging risk for these Member States, among them Italy and Spain, is that it might amplify the already large regional imbalances and increase the cost of monitoring the fulfilment of conditionalities at the national level.

Evidence from economic development literature shows that there is no "right" number of conditionalities. Koeberle S. G. (2004) points out that according to the World Bank's operational policy, a determined limit on the number of conditions is undesirable, because this restricts the number of reforms that can be supported. However, addressing performance deficiencies and capacity limitations through a larger number of conditions is generally found to be ineffective. The practice of conditionality in both the World Bank and IMF has been influenced by several studies showing that fixed-tranche rigidity<sup>28</sup> and a high number of conditions hamper the effectiveness of conditionality.<sup>29</sup> These institutions have introduced flexibility in phasing their loans and also reduced the number of conditions. In the World Bank practice, the number of conditions started to decline in the early 1990s, following claims that governments were overloaded with conditions that undermined the very effectiveness of these conditionalities.

In the light of the simplification of the EU agenda for 2014-2020<sup>30</sup>, amendments tabled within the Committee on Regional Development of the European Parliament to the draft CPR<sup>31</sup> acknowledged that ex-ante conditionalities can indeed allow increased efficiency and absorption of the Funds, but they should not lead to increased complexity.<sup>32</sup>

### **1.1.3. The link with Cohesion Policy objectives and the effectiveness of the funds**

Both the literature and the case studies draw attention to the appropriateness of certain ex-ante conditionalities in ensuring the effective and efficient implementation of the Cohesion Policy. In this respect, an amendment tabled within the Committee on Regional Development of the European Parliament to the draft CPR insisted that ex-ante

<sup>27</sup> The Polish Ministry of Regional Development - Department of Structural Policy Coordination (2012), p. 70. See also Institute for European Environmental Policy (2012), p. 27.

<sup>28</sup> The World Bank can provide development policy operations in two or more tranches, which it disburses as the borrower meets all the program conditions. Tranches may be fixed—that is, with their timing and sequence decided in advance—or they may be floating, conditioned on a particular policy action but with the country free to choose the timing. See World Bank (2005a), pag 7.

<sup>29</sup> World Bank (2005b), pag 17-18

<sup>30</sup> In its Communication on the Multiannual Financial Framework (MFF 2014-2020), the European Commission has seized the opportunity and decided to launch an agenda of ambitious simplification for the future MFF. Prerequisites for simplification include clarity of objectives and instruments, consistency of rules and legal certainty, light and speedy administrative procedures and processes - from application, through to implementation and reporting and auditing. To achieve this, the Commission has proposed for the next MFF the rationalisation of programmes and the use of simplified implementation mechanisms and procedures. See European Commission (2012c).

<sup>31</sup> Here and below, the text refers to amendments proposed by the Committee on Regional Development before the vote by the European Parliament and their possible adoption. Annex II lists the amendments quoted in the text and indicates whether they were eventually voted.

<sup>32</sup> Justification tabled within the Committee on Regional Development of the European Parliament to Art 17, paragraph 2. See European Parliament (2012e), p. 104.

conditionalities “shall not be used as tools to pursue objectives other than those pertaining to the Cohesion policy”.<sup>33</sup> Also, the CoR considers that ex-ante conditionalities should be restricted to areas that are directly related to the implementation of cohesion policy. This request derives from the concern that conditionality relating to a third party (such as the failure to transpose EU directives) might prejudice the preparation and implementation of Programmes and projects at the regional and local level<sup>34</sup>.

Concerns have been expressed regarding certain ex-ante conditionalities for which it is difficult to find a close or operational link with Cohesion Policy objectives. This is especially the case of general conditionalities, in particular, those related to the fulfilment of an international commitment by the EU. An illustration is provided by general ex-ante conditionality No. 3 requiring the implementation of the UN Convention on the rights of persons with disabilities. Similar is the case of ex-ante conditionality No. 4 promoting energy efficiency and renewable energy, which is clearly related to the implementation of the Kyoto Protocol.

Additionally, uncertainty arises with regard to certain thematic conditionalities that are broadly defined and for which the link with the thematic objective is not straightforward. An example is provided by the above-mentioned IEEP study<sup>35</sup> arguing that the link between thematic ex-ante conditionality No. 5 on risk prevention and management and the related thematic objective of promoting climate change adaptation is not formulated in a clear manner. The ex-ante conditionality requires the putting in place of a national or regional risk assessment procedure for disaster management, referring to the conclusions of the Justice and Home Affairs Council from April 2011. The Conclusions mostly address disaster management (including both natural and man-made) and invite Member States to develop a national risks assessment by the end of 2011. The relation to climate change adaptation however is largely indirect.

Case studies also highlight that some ex-ante conditionalities include a range of EU directives or measures that make their link with Cohesion Policy objectives rather ambiguous. For instance, ex-ante conditionality No. 4 on energy efficiency and renewable energy includes several directives, thus appearing to be a way of obliging Member States to comply with a number of EU laws, rather than of introducing conditions enabling the effective and efficient use of funds. Similarly, the thematic ex-ante conditionality No.6 on the protection of the environment and the promotion of sustainable use of resources, as well as the general conditionality No.1 concerning anti-discrimination, require the implementation of mechanisms aimed at ensuring the effective implementation and application of EU directives.

In general, there is concern about the appropriateness of those conditionalities dealing with reforms that should in any event be implemented by the Member States, because they are directly related to the Treaty establishing the European Union (e.g. State Aid)<sup>36</sup> or already mandatory, such as the transposition of the EU Directives. On the contrary, the requirement to draw up national or regional strategies or plans as an ex-ante conditionality is recognised as a more effective precondition to ensure the efficiency and effectiveness of the EU intervention. In this regard, the CoR<sup>37</sup> is in favour of only introducing ex-ante conditionalities dealing with the management of EU Programmes, inasmuch as they are

---

<sup>33</sup> Amendment 660 tabled within the Committee on Regional development of the European Parliament to Art 17, paragraph 1. See European Parliament (2012e), p. 103.

<sup>34</sup> Committee of the Regions (2012c), p. 6.

<sup>35</sup> Institute for European Environmental Policy (2012), p. 27.

<sup>36</sup> European Union (2006).

<sup>37</sup> Committee of the Regions (2011b), p. 4.



instrumental in improving the efficiency of these programmes (in terms of the technical and administrative capacity of the actors involved), rather than with the implementation of EU legislation.

Finally, ex-ante conditionalities should reflect specific factors clearly related to the achievement of Cohesion Policy objectives, which are to promote growth and jobs while reducing economic, social and territorial disparities across Regions. Thus, the issue is to pick up drivers that effectively contribute to the Cohesion Policy's objectives. This is not a trivial issue, first because those objectives might not be easily combined (e.g., there might be a trade off between objectives in terms of growth and competitiveness and those in terms of redistribution and equity), and second, because there is hardly a single determining pattern acknowledged (i.e., that different theoretical perspectives identify different factors enabling the achievement of Cohesion Policy's objectives, or assign them different degrees of priority - see Box 1 below).

**Box 1: Examples of factors expected to achieve Cohesion Policy objectives**

**EXAMPLES OF FACTORS EXPECTED TO ACHIEVE COHESION POLICY OBJECTIVES (AS IDENTIFIED IN THE LITERATURE ON ECONOMIC DEVELOPMENT)**

The literature on economic development identifies a number of factors expected to contribute to growth and competitiveness and the catching up of laggards areas. These factors might be valid at national level, and under specific circumstances at regional level, or be specific to the regional level. For example, Bassanini et al. (2000)<sup>38</sup> points out that wide disparities in output and productivity patterns among OECD countries can be mostly related to the capability of countries to employ people of working age. Although wide disparities in employment rates may partly depend upon different social and cultural habits, it is fairly clear that employment patterns are closely related to different policy settings and institutions. The working paper sheds light on the fact that stagnant employment conditions are often found in countries (e.g. several countries in Continental Europe) that have been more hesitant in embarking on bold structural reforms (e.g. pension reforms, increasing the competition of the retail trade and professional service, etc.) or in those with economic stagnation - and consequent labour shedding (e.g. Japan). The importance of new technologies, and specifically ICT, in boosting output and productivity growth is also stressed. Technological change has led to rapid growth in service industries and the knowledge-based economy. As a result, regions that produce information and knowledge are better equipped to compete in that economy. Also important is the ability to create a well-educated population, to attract and retain talented people, to be well connected to global markets, and to have a business-friendly environment and infrastructure system, in addition to a well-functioning labour market.<sup>39</sup> These potential driving forces of growth require suitable framework conditions.<sup>40</sup> Evidence from OECD countries suggests that investing in public infrastructure is a key policy response to economic recession, but it is not enough and a more integrated approach is needed to increase impact on growth. Integrating investment projects into a coherent strategy can spread their beneficial effects.<sup>41</sup>

**Source:** Authors.

<sup>38</sup> Bassanini et al. (2000), p. 32.

<sup>39</sup> OECD (2009c), p.2.

<sup>40</sup> Bassanini et al. (2000), p. 38.

<sup>41</sup> OECD (2009c), p.6-7.

## **1.2. The criteria for the assessment of the fulfilment of the ex-ante conditionalities**

The appropriateness of the criteria proposed for the fulfilment of the ex-ante conditionalities is a controversial issue. Concerns have been raised with respect to the selection and definition of these criteria.

First, it is important that the selected fulfilment criteria are closely associated with, and representative of, the related ex-ante conditionality. This is critical since an ex-ante conditionality will be deemed to be fulfilled if the associated criteria are respected. In this respect, a European Commission document<sup>42</sup> highlights that the criteria for the assessment of the fulfilment of the ex-ante conditionalities were selected on the basis of their specific relevance with regard to the effectiveness of the investments financed by the Structural Funds. However, case studies indicate that the rationale for introducing some criteria and excluding others is not always straightforward. In particular, when ex-ante conditionalities include a wide range of issues, the rationale guiding the selection of the fulfilment criteria is sometimes unclear. Examples are provided by thematic conditionality No. 3 concerning the implementation of the SBA and by conditionality No. 8.2. In order to ensure the effective implementation of these conditionalities, a much longer list of compliance criteria would be needed. However, this would make compliance with these ex-ante conditionalities, in the timeframe established by the European Commission (at the latest by 31 December 2016), challenging to say the least.

In this regard, the UEAPME proposes that, before their adoption, criteria be discussed with the concerned partners at European level in order to check their pertinence and efficiency.<sup>43</sup>

In addition, the selection of criteria poses the question of the level competence at which the criteria are best dealt with. Amendments tabled within the Committee on Regional Development of the European Parliament to the draft CPR<sup>44</sup> pointed out that it is essential that the European Commission considers the institutional context of each Member State and the way in which competencies are shared within it. It is indeed problematic if a Member State takes engagements that rely on local and regional authorities, and viceversa.

Finally, the case studies point out that the poor and broad definitions of certain fulfilment criteria might lead to varying interpretations by Member States, as well as to different results in the self-assessment procedure (see Section 2.1 for a detailed discussion).

## **1.3. Sanction mechanism**

Member States and Regions generally fear the possibility of suspension of payments by the European Commission. The main concern is that suspensions might be applied in the case of failure or deficiencies that are beyond their responsibility or control, and that this would cause unjustified penalties at the regional level in particular. In this respect, different amendments tabled within the Committee on Regional Development of the European Parliament aimed at loosening or even removing the possibility that suspensions of payments take place. For instance, it suggested that “in its decision making the

---

<sup>42</sup> European Commission (2012a), p.2.

<sup>43</sup> UEAPME (2012), p. 4.

<sup>44</sup> Justification tabled within the Committee on Regional Development of the European Parliament to Art 17, paragraph 2. See European Parliament (2012e), p.105.

Commission should pay close attention to the economic and social consequences of the suspending decision".<sup>45</sup>

Evidence from literature shows that sanctions for failure to comply with conditions would be difficult to implement without incurring the risk of obtaining counterproductive effects. The imposition of a sanction mechanism might incur two kinds of risk. On the one hand, actors in charge of fulfilling the ex-ante conditionalities<sup>46</sup> might adopt "strategic and precautionary behaviour" during the preparation of the Operational Programmes and Partnership Contracts<sup>47</sup>. In order to avoid the suspension of payments by the European Commission, the relevant actors lagging behind in the fulfilment of an ex-ante conditionality or with less administrative capacity to comply with criteria within the timeframe, may decide to allocate money to the investment priorities for which less effort is needed to comply with the related ex-ante conditionalities. On the other hand, there is the risk of a "pure" compliance approach by relevant actors, meaning that they comply with the criteria without using the ex-ante conditionalities as a means of introducing preconditions for the effective and efficient management of EU funds. For instance, they would set up a national or regional strategy without actually ensuring an appropriate budget to make it effective.

<sup>45</sup> Amendment 685 tabled within the Committee on Regional development of the European Parliament to Art 17, paragraph 5. See European Parliament (2012e), p. 117.

<sup>46</sup> Ex-ante conditionalities should be fulfilled at the administrative level where the relevant responsibility lies. In the case of certain ex-ante conditionalities, this may be the national level (for example in the case of EU Directives), while in other cases it may be the regional level (for example in the case of a regional innovation strategy for smart specialisation or in case of a policy framework for lifelong learning) depending on the institutional context of a given Member State. See European Commission (2012a), p. 1.

<sup>47</sup> European Parliament (2012d).



## 2. AN ASSESSMENT OF THE PROPOSED MECHANISM: PRACTICAL IMPLICATIONS

### KEY FINDINGS

In regard to the concerns raised by the introduction of ex-ante conditionalities and the practical implications of their implementation, the European Commission has clarified several aspects of the envisaged mechanisms. However, the following issues still need clarification:

- The self assessment exercise might be made difficult by the high **number** of criteria, and their **broad and poor definition**. Differences in measurement definitions also risk being a problem for inter-state comparisons;
- The respective **role of national and regional authorities** in deciding actions for the fulfilment of ex-ante conditionalities and their respective responsibility for possible failure in meeting the conditionalities are not always clearly defined;
- The **monitoring and reporting** of the progress towards the fulfilment of the ex-ante conditionalities pose fewer challenges in countries with less complex multilevel governance.

The implementation of the ex-ante conditionalities mechanism includes a number of steps. It starts with a self-assessment by the Member State, followed by a consistency check by the European Commission and a report on the progress achieved by the Member States, and ends with the suspension of payments, if necessary, by the European Commission. In what follows, the practical implications of the proposed mechanism are highlighted by following the phases described in Figure 2.

### 2.1. Self-assessment by Member States

During the preparation of the programming documents, Member States are asked to carry out a self-assessment procedure with the aim of identifying the ex-ante conditionalities that are applicable to the Operational Programmes<sup>48</sup> and to assess the extent to which such ex-ante conditionalities have been fulfilled. For each ex-ante conditionality not fulfilled, Member States shall provide a detailed description of the actions planned to fulfil the ex-ante conditionality in the Operational Programmes, including the timetable for their implementation (Art 87.2.e of the draft CPR). A summary of the actions to be taken at national and regional levels and the timetable shall also be provided in the Partnership Contract (Articles 14.d.ii and 17.3 of the draft CPR).

Clarifications have been made by the European Commission<sup>49</sup> with regard to the steps of the self-assessment process for Member States. As explained, the process consists of the following phases: 1) the establishment by a Member State of specific objectives for its programmes; 2) the assessment of the applicability of the thematic and general ex-ante conditionalities to each of the specific objectives; 3) the assessment of whether the criteria

<sup>48</sup> It is worth noting that the overall mechanism of ex-ante conditionalities, as laid down in art 17 of the draft CPR, does not apply to programmes under the European territorial cooperation objective.

<sup>49</sup> Council of the European Union (2012b).

associated with the applicable ex-ante conditionalities are fulfilled; and finally 4) for each conditionality not fulfilled, a description of the actions to be taken, identification of the bodies responsible and the establishment of a timetable to ensure that they will be fulfilled by the end of 2016 at the latest.

However, the evidence collected draws attention to some aspects that remain unclear and might make the implementation of this procedure cumbersome.

### **2.1.1. Assessing the applicability of the ex-ante conditionalities**

Member States are asked to assess the applicability of the thematic and general ex-ante conditionalities laid down in the fund-specific rules to each of the specific objectives for an investment priority or a Union priority<sup>50</sup>.

Identifying the applicable ex-ante conditionalities might be not straightforward. A note from the European Commission makes clear that an ex-ante conditionality is applicable to a priority of a given programme *only* where there is a “direct and genuine link to and a direct impact on the effective and efficient achievement of the specific objectives for an investment priority or a Union priority”. As a result, one might infer that not every specific objective of an Operational Programme is necessarily linked to an ex-ante conditionality laid down in the Fund-specific rules.<sup>51</sup> In the same vein, amendments tabled within the Committee on Regional Development of the European Parliament to Art. 17<sup>52</sup> of the draft CPR proposed that an ex-ante conditionality shall be applied only when it has a direct link to the effective implementation of the funds covered by the CPR.

In general, establishing the link between ex-ante conditionalities and priorities of a programme is easier in the case of the thematic ex-ante conditionalities, because they have been designed as directly related to the thematic objectives laid down in Art. 9 of the draft CPR. These thematic objectives are translated into priorities specific to each CSF Fund and set out in the Fund-specific rules<sup>53</sup>. On the contrary, the general ex-ante conditionalities might be more challenging in this respect since they are related to cross-cutting issues such as, for instance, State aid, public procurement and gender equality.

### **2.1.2. Assessing the fulfilment of the ex-ante conditionalities**

Concerns have also been raised with regard to the second step of the self assessment procedure, which is to verify to what extent the applicable ex-ante conditionalities are fulfilled. In this regard, case studies shed light on some critical aspects that might make the performance of this task challenging.

The absence of directive-specific national databases and the different systems of measurement used might lead to mixed results in the self-assessment of the ex-ante conditionalities. Concerns may arise when more than one authority is dealing with the assessment of the same ex-ante conditionalities. A risk at stake is that actors (national or regional authorities) carry out their assessment on the basis of different measurement

---

<sup>50</sup> A specific objective is defined as the result to which an investment priority or Union priority shall contribute in a specific or national context through actions or measures undertaken within a priority of a programme. See Council of the European Union (2012a), p. 3

<sup>51</sup> Council of the European Union (2012a), p.2.

<sup>52</sup> Amendment 661 tabled within the Committee on Regional development of the European Parliament to Art 17, paragraph 2. See European Parliament (2012e), p. 104.

<sup>53</sup> See European Commission (2011o), European Commission (2012d), European Commission (2012e).

systems. A practical example is provided by the Italian case study concerning the fulfilment of ex-ante conditionality No. 4 dealing with the transposition of EU directive 2010/31/EU on the energy performance of buildings. Between 2002 and 2009, in the absence of a uniform national system, some Italian regions developed their own guidelines to calculate the energy efficiency of buildings, thus creating wide territorial differences in buildings' energy performance standards. As a result, the self-assessment by regional authorities with regard to the application of this directive may lead to different conclusions. At the national level the result would be that the regions make more or less effort to fulfil the ex-ante conditionality, simply because the self-assessment is carried out on the grounds of different measurement systems.

The implementation of Directive 2010/31/EU on the energy performance of buildings also draws attention to the risk that different measurement definitions and different assessment procedures at the national level might make a comparison across Member States challenging. For instance, systems of certification of the energy performance of buildings are issued by Member States. However, these are different and the calculation procedures used are sometimes ambiguous.<sup>54</sup>

In this regard, an amendment tabled within the Committee on Regional Development of the European Parliament to Art. 17 of the draft CPR<sup>55</sup> pointed out that the assessment shall be based on a common methodology and involve the partners referred to in Art. 5 of the draft CPR, which include competent regional, local, urban and other public authorities, economic and social partners as well as bodies representing civil society.

Furthermore, the self assessment procedure might be particularly difficult in the case of ex-ante conditionalities that include a wide range of criteria to comply with. Examples are provided by the thematic ex-ante conditionalities No. 3 and 8.2 concerning the implementation of the SBA and entrepreneurship, self-employment and business creation, respectively. In both cases, different principles and measures are expected to be implemented in order to comply with the ex-ante conditionality. Yet, previous Member States' reviews of the SBA implementation<sup>56</sup> show that a country may well achieve progress with respect to specific criteria while deteriorating its position with respect to others depending on the wider economic circumstances. Overall, different results might be delivered in terms of fulfilment, making the self-assessment exercise difficult to compare across countries.

Finally, the broad and poor definition of criteria might make the assessment of the fulfilment difficult. For instance, how should one assess whether a strategy for business start-up support (conditionality No. 8.2) is "comprehensive and inclusive"? A further example is provided by the general ex-ante conditionality concerning the implementation and application of the State aid rules. There is uncertainty as to how the criterion "measures to strengthen administrative capacity" should be understood.

<sup>54</sup> Casa&Clima (2011) "Nuova direttiva EPBD: lo stato di applicazione in Italia e in UE".

<sup>55</sup> Amendment 664 tabled within the Committee on Regional development of the European Parliament to Art 17, paragraph 2. See European Parliament (2012e), p. 105.

<sup>56</sup> European Commission, "SBA factsheets 2010/11, [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm).

### **2.1.3. Performing the self-assessment: the role of national and regional authorities**

Because regional authorities are generally in charge of preparing and implementing programmes, they should in principle play a central role in the self-assessment, yet art. 17.2 only refers to Member states in general. In addition, some confusion pertaining to the role of regional authorities with regard to the self-assessment of certain ex-ante conditionalities for which responsibilities lie with the Member States such as the transposition of EU directives can arise. An example is provided by thematic ex-ante conditionality No. 4 concerning the transposition of a number of EU directives related to energy efficiency and renewable energy into national laws. In this case, the ex-ante conditionality applies to the national level, it therefore seems logical that the self-assessment is realised at national level. It remains unclear, however, what the role of regional authorities is, even though the latter are potentially concerned by the consequences of non-fulfilment of the ex-ante conditionality. The same problem might occur for the ex-ante conditionalities requiring the setting up of national strategies, such as thematic conditionality No. 2.2 requiring the existence of a national plan on Next Generation Access (NGA) infrastructure.

A related difficulty of the self-assessment process is the role of national and regional authorities in setting out actions for the fulfilment of the unfulfilled ex-ante conditionalities. Again, some confusion might arise in the case of ex-ante conditionalities for which responsibility lies with the Member States. For example, as pointed out by the CoR, if the Partnership Contracts (PCs) containing the summary of the actions to take is drafted before the Operational Programmes, this might pose a problem since the extent to which regions and local authorities will be involved in the discussion of the PC is not known a priori.<sup>57</sup> If their involvement is low, there might be a risk that the actions that are decided in the PCs cannot be delivered by some of the authorities. To this end, strict coordination with local and regional authorities is needed to ensure the effective fulfilment of the ex-ante conditionalities.

## **2.2. European Commission's consistency check**

Member States are asked to provide information on the applicable ex-ante conditionalities, on whether they are fulfilled or not and on the actions to be taken in order to comply with the unfulfilled ex-ante conditionalities, including the timetable and the actors responsible for their implementation to the European Commission for the consistency check.

The European Commission<sup>58</sup> made it clear that the purpose of its check is to verify the consistency and the adequacy of the information provided by the Member States, by focusing on two aspects: i) the applicability of ex-ante conditionalities to the specific objectives pursued within the priorities for each programme; ii) the fulfilment of applicable ex-ante conditionalities based on criteria laid down in the Fund-specific rules. The European Commission explained that the intent is to verify that the Member State's self-assessment is soundly-based and consistent. For this purpose, in the course of examining the programming documents, the European Commission will limit its check to the fulfilment of the specific criteria in strict formal terms, without appraising the quality of the strategies required or their effectiveness<sup>59</sup>.

---

<sup>57</sup> Committee of the Regions (2011a), p. 34.

<sup>58</sup> Council of the European Union (2012b), p. 3

<sup>59</sup> European Commission, (2012a), p. 2.



In practice, it implies that in the case of ex-ante conditionalities requiring the setting up of national and regional strategies (e.g. thematic conditionality No.1 requiring the existence of a national or regional research and innovation strategy), the assessment should be limited to verifying whether such strategies have been adopted without assessing their quality or effects.

However, one difficulty is that some criteria are defined in such a way as to require a qualitative assessment (e.g. regarding the “inclusiveness” of a strategy). The second issue is that the intention to rule out quality elements from the assessment might enhance a formalistic approach to the implementation of the ex-ante conditionalities mechanism.

Member States objected to the possibility of suspending interim payments to a programme at its approval on the basis of the consistency check by the European Commission highlighting a failure to comply with the applicable conditionalities.<sup>60</sup> In this regard, the European Commission clarified that the decision to suspend all or part of the interim payments at the stage of adoption of the programme is taken “*where necessary to avoid significant prejudice to the effectiveness and efficiency of the achievement of the specific objectives of the priority concerned*”.<sup>61</sup> In particular, in an explanatory note the European Commission makes it clear that the decision will be taken by considering the following two aspects:

- The degree of non-fulfilment of the ex-ante conditionality concerned (i.e. whether one or more criteria for the ex-ante conditionality had not been respected to a substantial degree).
- The level of risk that, through the non-respect of the criterion or criteria concerned, there will be a negative impact on the achievement of the specific objective of the priority/ies concerned.

However, there are concerns that the possibility of suspension of funds at the start of the programme might delay its implementation and the achievement of its objectives.

### 2.3. Reporting on the progress achieved

Progress towards the fulfilment of the ex-ante conditionalities shall be examined by the Monitoring Committee and reported by Member States to the European Commission in the Progress Reports on the implementation of the Partnership Contract due by 30 June 2017 and by 30 June 2019 (Art. 46.2.c of the draft CPR).

Moreover, Member States are required to set out, in the annual implementation report, actions taken to fulfil the ex-ante conditionalities as well as any issues which affect the performance of the programme, and the corrective measures taken (*art 46.2 of the draft CPR*).

Case studies highlight that reporting might be expensive depending on the country's administrative structure. Clearly, sound and systematic reporting is more costly in decentralised states. For instance, in Ireland a Monitoring Committee was established with the task of publishing quarterly reports detailing the progress of the implementation of the

<sup>60</sup> The Polish Ministry of Regional Development (2012), p. 11.

<sup>61</sup> Council of the European Union (2012b), p. 4.

SBA-related measures included in the National Action Plan for Jobs. In Italy this would require much greater effort and resources because of overlapping jurisdiction between regions and central government.

A further example is provided by the conditionality on the implementation of EU State aid rules. Again, countries with a more complex and decentralised administrative structure, such as Italy, face more challenges in ensuring implementation and supervision, as well as in the dissemination of EU State aid rules.

## **2.4. Timeframe and consequence of (non) fulfilment of the ex-ante conditionalities**

The mechanism of ex-ante conditionalities, as stated in Art 17.5 and Art. 134,1 of the draft CPR, foresees the possible suspension of all or part of the interim payments at the level of priority axes or Operational Programme by the European Commission during the implementation of an Operational Programme. This happens if actions planned to fulfil the ex-ante conditionalities that appeared not to be fulfilled in first place are not adopted within the deadline agreed in the Operational Programme at the time of the negotiation process.

In this respect, one concern identified by the CoR is that a suspension of funds by the European Commission based on the implementation of required strategies would breach the proportionality and the subsidiarity principles.

Like for the possible suspension of payment at the Programme start, it is worth noting that the European Commission's decision is based on the non-fulfilment of the agreed actions within the deadline set out in the Operational Programme, i.e., that only the compliance with the actions planned and not their quality is assessed.

According to Art 17.3 of the draft CPR, Member States are required to ensure the fulfilment of the ex-ante conditionalities no later than two years after the adoption of the Partnership Contract or by 31 December 2016, whichever is earlier.<sup>62</sup> Any decision to suspend funds will make reference, however, to the deadline set out in the Operational Programme, which could be before these time-limits.

In general, the mechanism sketched above conceals different sources of uncertainty or weaknesses. For a start there is some doubt about whether the suspension takes place automatically (as Art 17.5 would tend to indicate<sup>63</sup>) or whether it is just a possibility (as Art 134 would suggest<sup>64</sup>). In this respect, Amendment 680 tabled within the Committee on Regional Development of the European Parliament to Art 17 stressed that the suspension of funds when MS has failed to comply with actions agreed within the deadline set out is a possibility rather than an automatic consequence by revising paragraph 5 as follows: "The failure to complete actions to fulfill an ex ante conditionality by the deadline set out in the programme may constitute a basis for suspending payments by the Commission".

---

<sup>62</sup> Amendment 670 tabled within the Committee on Regional Development of the European Parliament to Art 17 of the draft CPR extend the deadline for the implementation of the actions to ensure the fulfilment of the ex-ante conditionalities to three years after the adoption of the Partnership Contract or by 31 December 2017, whichever is earlier. See European Parliament (2012e).

<sup>63</sup> "The failure to complete actions to fulfil an *ex ante* conditionality by the deadline set out in the programme shall constitute a basis for suspending payments by the Commission".

<sup>64</sup> "All or part of the interim payments at the level of priority axes or operational programmes may be suspended by the Commission where the Member State has failed to undertake actions set out in the operational programme relating to fulfilment of an *ex ante* conditionalities".

In addition, it is not clear as to whether all actions and thus criteria have to be simultaneously respected by Member States in order to avoid the suspension of funds. Also as mentioned earlier, despite the intention not to include quality elements in the assessment, some criteria, de facto, require a qualitative assessment which might obscure the grounds on which the suspension decision might be taken.

Another critical issue is the level at which the suspension of funds is applied. According to Art. 134 of the draft CPR, failure to comply with actions set out in the Operational Programme relating to the fulfilment of the ex-ante conditionalities allows the European Commission to suspend the funds at the level of the priority axis or the Operational Programme. This procedure seems rather questionable when the responsibility for the compliance with the actions lies at the national level, such as the transposition of EU directives or the setting up of national strategies. One issue is whether the suspension of funds will affect also regional Operational Programmes for which the ex-ante conditionality was declared applicable.<sup>65</sup> In this regard, there is concern for Regions that have no influence on decisions on the national level or perform better than the State or other Regions. This applies especially when Regions have legislative powers and can anticipate national legislation. An example is provided by the Italian context where some Regions have anticipated the national legislation on energy efficiency (thematic conditionality No. 4) by introducing sophisticated measurement standards in the field of the energy performance of buildings.

Another question concerns the degree of discretion which the European Commission will use when suspending payments if the suspension is not automatic (i.e., how far will the Commission take into account exogenous factors hampering the satisfactory implementation of the actions within the agreed timeframe?). Also, will the European Commission be able to have a differentiated attitude with respect to the type of conditionality under scrutiny? Indeed, the case studies show that ex-ante conditionalities with a sound legal basis, such as the implementation of State aid law, might pose minor challenges for implementing actions aimed at their fulfilment within the timeframe set out given that Member States have gained considerable experience and that internal arrangements have been established for many years to comply with the EU requirements<sup>66</sup>. Thus, the question arises as to whether the assessment by the Commission, and consequently the decision to suspend payments, should take into account the fact that some conditionalities might be more difficult to comply with than others.

A related difficulty has to do with the time span allowed to meet the fulfilment criteria. In some cases, the implementation of the agreed actions might need more time than in others. The question arises therefore as to whether the imposition of a single and rather tight final deadline (end of 2016 at the latest), which in the timetable included in an Operational Programme might be even tighter, is realistic.

Lastly, and importantly, it appears that the features characterising the payment suspension as currently designed might encourage a formalistic approach to the ex-ante conditionalities mechanism. As a matter of fact, it might not be sufficient to have the actions implemented, the fulfilment criteria met, and the corresponding ex-ante conditionality fulfilled to guarantee that the ex-ante conditionalities will produce the

<sup>65</sup> In this regard, Amendment 689 tabled within the Committee on Regional Development of the European Parliament makes clear that “in the case of Member States adopting a regionalised programming system, the suspension of payments by the Commission shall concern solely those Regions which have not fulfilled the ex-ante conditionalities”. See European Parliament (2012e).

<sup>66</sup> However, as highlighted earlier (see 1.1.3), they represent a challenge in terms of their pertinence with respect to the objective of enhancing the effective implementation of the Funds.

expected effects. In fact, there are considerations that simply go beyond the remit of the exercise but that may be crucial for the effective functioning of the mechanism. For example, the economic crisis, which is unevenly affecting Member States, might jeopardise the effects of actions beyond formal legislative requirements. An illustration is provided by the implementation of the SBA and in particular by access to finance, an area that has been particularly hard hit by the current crisis and where progress has been slower for both Italy and Ireland than in other European countries.

A further example is provided in the Italian context, where the excessive number of laws and their inadequacies might jeopardise the real effect expected from the fulfilment of the ex-ante conditionalities. For instance, the implementation of the SBA measures is intrinsically linked to wider regulatory and administrative simplification processes that take a long time to materialise and accordingly to bring about results. In short, the agreed actions (law, strategies or measures) might well be in place, and therefore the ex-ante conditionalities formally fulfilled, but external factors could obfuscate the expected effects.

### 3. FOCUSING ON THREE EX-ANTE CONDITIONALITIES

#### KEY FINDINGS

Three case studies were carried out on the prospect of the implementation of three ex-ante conditionalities (including aspects of a fourth thematic one) in three Member States. The main findings are:

- With a view to possible **constraints to the fulfilment of the ex-ante conditionalities** the case studies draw particularly attention to the complexity of the governance system of Member States and the clearness of the definition of the fulfilment criteria.
- The case study clearly indicate that even if all fulfilment criteria are respected, and thus Art. 17 of the draft CPR is formally complied with, ex-ante conditionalities and objectives linked thereto may not automatically be attained since they also depend on other **factors not reflected in the fulfilment criteria**. Extending Annex IV of the draft CPR to the largest number of factors possible is problematic from a practical point of view and thus the **fulfilment criteria** indicated therein **need to be carefully selected and formulated** in order to ensure that the most relevant ones with respect to the ex-ante conditionalities and the expected effects are included therein.
- Given the current stage in the legislative/programming cycle the chapter covers possible constraints linked to the fulfilment of the ex-ante conditionalities (and their expected effects) with a view to shed light on the self-assessment by Member States as foreseen in Art. 17 of the draft CPR. The focus is on whether criteria are already fulfilled and if not, the objective is to assess the effort necessary to fulfil them.

This chapter presents an analysis of case studies on three selected ex-ante conditionalities, one general and two thematic (including aspects of a third thematic one).<sup>67</sup> The aim is to shed light on the rationale for their introduction as well as to investigate the constraints to their fulfilment by the Member States. To this end, three Member States were selected, namely Italy, Ireland and Lithuania, on the grounds of their illustrative potential as old and new MSs, large and small countries and centralised/decentralised governance. In Table 2 of Annex III, the three ex-ante conditionalities analysed as well as the criteria for their fulfilment are reported, while in Table 3 the rationale for their introduction is detailed. A comparative assessment for each ex-ante conditionality is provided in what follows. In so doing, the focus is on the criteria for fulfilment, which if respected, determine whether the corresponding ex-ante conditionalities are fulfilled.<sup>68</sup> The case studies are therefore an exercise aimed at verifying whether selected ex-ante conditionalities are hypothetically fulfilled and if not, the extent of the efforts that would be necessary to fulfil them.

<sup>67</sup> Research for these case studies was conducted in May 2012.

<sup>68</sup> Indeed at this stage, programmes have not been adopted yet, and actions to take in order to meet the fulfilment criteria are not identified.

### 3.1. General ex-ante conditionality No. 5

"The existence of a mechanism that ensures effective implementation and application of EU State aid law"

#### 3.1.1. Description and rationale for the ex-ante conditionality

State aid is, according to art. 107 of the Treaty on the Functioning of the European Union (TFEU), any aid granted by a Member State or through State resources in any form whatsoever. If this aid distorts competition by favouring certain undertakings or the production of certain goods, art. 107 TFEU deems it insofar as it affects trade between Member States, to be incompatible with the internal market. State aid legislative acts are subject to continuous evolution depending upon the conditions of the single market (see Annex III for more details). Most importantly, the Commission must grant its approval before a State aid scheme is implemented. For these reasons, it is crucial that each Member State establishes its national implementation mechanism and ensures effective dissemination of information.

#### 3.1.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria

According to the fulfilment criteria, effective implementation and application of EU State aid law should be ensured through:

- Institutional arrangements for the implementation, application and supervision of EU State aid law;
- A strategy for training and dissemination of information for staff involved in the implementation of the funds;
- Measures to strengthen the administrative capacity for implementation and application of EU State aid rules.

In Italy the Ministry of Economic Development website provides all the relevant legislation concerning EU State Aid legislative acts.<sup>69</sup> A State Aid Service has been established with the Department of European Affairs within the Council of Ministers to provide preliminary advisory services on demand to national or regional authorities. Several guidelines on EU State aid legislative acts have been issued by regional authorities, chambers of commerce, entrepreneur associations and local development agencies and are easily accessible through the Internet.

In Ireland State aid schemes for the period 2007-2013 are operated by many Departments, Offices and agencies.<sup>70</sup> An Inter-departmental Committee on State aid was established in November 2002. The Committee is used to strengthen awareness, co-ordination, decision-making and compliance on State aid matters. A number of key points in its approach are: i) assessment of "State aid implications" is encouraged from the outset, ii) each department is responsible for notifying schemes to the European Commission for its approval, iii) co-

<sup>69</sup> [http://www.dps.mef.gov.it/normativaCE\\_aiutidistato.asp](http://www.dps.mef.gov.it/normativaCE_aiutidistato.asp)

<sup>70</sup> Each Minister is responsible for the State aid schemes and payments made by his/her Department and each Department/Office has appointed a designated co-ordinator on State aid matters, through whom State aid matters can be channelled.

ordination and liaison in relation to most State aid matters is undertaken by the State Aid Unit at the Department of Enterprise, Trade and Employment.<sup>71</sup>

In Lithuania the main institution responsible for State aid is the Competition Council of the Republic of Lithuania. The responsibilities of this institution include coordinating the implementation of the State aid law, consulting government institutions and communicating with the European Commission. All the ministries are involved in the implementation of the State Aid law in their respective fields.<sup>72</sup> Training and the dissemination of information are carried out by the Competition Council. However, these activities are not carried out in a systematic way, but are provided upon demand from the institutions concerned (e.g. two or three training sessions a year).

### **3.1.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto**

State aid is an area where Member States have gained considerable experience and internal arrangements have been established for many years. However, it is a complex and dynamic subject that requires continuous effort to comply with new legislation. As a result, countries with a more complex and decentralised administrative structure, such as Italy, face more challenges in ensuring implementation, supervision and dissemination of EU State aid rules and thus potentially concerning the fulfilment of the fulfilment criteria.

In such cases establishing an institution to play the role of coordinator seems to be helpful. Examples are provided by the Competition Council in Lithuania and the Inter-departmental Committee in Ireland in charge of ensuring coordination in the implementation of State aid laws.

Constraints to the fulfilment of the ex-ante conditionality may also be posed by a poor definition of the criteria. For instance, fulfilment of the criterion "Measures to strengthen administrative capacity for the implementation and application of EU State Aid rules" was understood in Lithuania only in the form of training. In this regard, more guidelines on how to fulfil the criteria are needed from the European Commission

## **3.2. Thematic ex-ante conditionality No. 3 (including aspects of No. 8.2)**

- 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 including the "Think Small First" principle.
- 3.2 Transposition into law of Directive (2011/7/EU) of the European Parliament and of the Council of 16 February 2011 on combating late payments in commercial transactions.

### **3.2.1. Description and rationale for the ex-ante conditionality**

Adopted in June 2008, the Small Business Act (SBA)<sup>73</sup> reflects the Commission's political will to recognise the central role of small and medium-sized enterprises (SMEs) in the EU

<sup>71</sup> State Aid Unit Department of Enterprise, Trade and Employment (2007).

<sup>72</sup> In Lithuania, there are clear institutional arrangements for the implementation, application and supervision of EU State Aid law, which are described in the national law (Competition Act).

<sup>73</sup> European Commission (2008).



economy. The SBA puts in place a comprehensive SME policy framework for the EU and its Member States through 10 common principles, four legislative proposals including the late payment directive (Directive 2011/7/EU), a new European Company Statute and policy actions.<sup>74</sup> The aim of the SBA is to contribute to achieving the objectives of the Europe 2020 strategy. In certain respects,<sup>75</sup> the SBA is also linked to ex-ante conditionality No. 8.2 on *“self-employment, entrepreneurship and business creation”*, which requires the existence of a comprehensive strategy for inclusive start-up support in accordance with the SBA, the employment guidelines and broad guidelines for the economic policies of the MS and of the Union.<sup>76</sup> The rationale for the introduction of these ex-ante conditionalities is further described in Annex III.

### 3.2.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria

During 2010 and 2011, different measures were implemented that count for the fulfilment criteria (for a detailed account of the latter, see Annex III). Monitoring mechanisms for the implementation of the SBA, for example, were introduced in Ireland and Italy, which set up a High Level Group on Business Regulation<sup>77</sup> and a permanent Advisory Board, respectively.<sup>78</sup> Italy took a step forward in meeting another fulfilment criteria by introducing the requirement to perform regulatory impact assessments for SMEs at a regional level.<sup>79</sup> However, progress in this respect is expected to be very different amongst Italian regions.

With regard to the “Think Small First” principle, no significant legislative acts or policy measures were undertaken by the Italian government.<sup>80</sup> In contrast, the Irish government took some steps<sup>81</sup> and decided to bring forward its target in the National Recovery Plan so as to reduce the administrative burden on businesses by 25% between 2010 and the end of 2011. As for Lithuania, the “Think Small First” principle is applied through the involvement of stakeholders of SMEs in the legislative process.

Concerning Directive 2011/7/EU, the present Italian legislation sets a 75 day term for the payment of public works and the interest penalty is well below the 8% threshold.<sup>82</sup> As for

<sup>74</sup> Such as the establishment of EU Centres in China and India or mobility programmes for nascent entrepreneurs or apprentices. See European Commission (2012f)

<sup>75</sup> Concerning the issue of reducing times and costs to start-up a company.

<sup>76</sup> A new set of integrated guidelines for economic and employment policies were proposed by the European Commission on 27 April 2010. The guidelines form part of the Europe 2020 strategy for smart, sustainable and inclusive growth. The guidelines for employment and economic policies are presented as two distinct — but intrinsically interconnected — legal instruments: A Council Recommendation on broad guidelines for the economic policies of the Member States and of the Union -Part I of the Europe 2020 Integrated Guidelines; A Council Decision on guidelines for the employment policies of the Member States –Part II of the Europe 2020 Integrated Guidelines. See European Commission (2010f).

<sup>77</sup> It was set up to fast-track simplifications to specific red tape issues identified by businesses.

<sup>78</sup> Established in March 2010 within the Ministry of Economic Development, the Advisory Board is in charge of the economic monitoring and identification of the needs and concerns of SMEs. It is made up of representatives of regions, provinces, municipalities, business associations, chambers of commerce, the Presidency of the Council of Ministers, the Italian Bank Association, the National Statistical Office and national experts on SME matters.

<sup>79</sup> National law No. 180 of 11 November 2011 (“Norme per la tutela della libertà d’impresa. Statuto delle imprese”)

<sup>80</sup> European Commission, “SBA factsheet 2010/11– Italy”, [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2010-2011/italy\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2010-2011/italy_en.pdf)

<sup>81</sup> European Commission, “SBA factsheet 2010/11– Ireland”, [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2010-2011/ireland\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2010-2011/ireland_en.pdf)

<sup>82</sup> The transposition of the previous directive on late payment (2000/35/EC) was not appropriate since it excluded from its scope the sector of public procurements for works and contracts whose sole or main objective is the supply of goods or the provision of services in exchange for the payment of a price. See UEAPME (2006).



Ireland, the term for payment is set at 30 days in compliance with the EU 2002 Late Payment Regulation<sup>83</sup> while from 1 January 2012 late payment interest is set at 8% per annum. Amendments to national law are under preparation in Lithuania to meet the requirements of the Directive.

In Italy it is possible to register a company in one day.<sup>84</sup> However, the administrative costs of starting a new business are Euro 2,673; well above the Euro 100 target set by the ex-ante conditionalities. In Ireland starting a new business may take up to five days and the cost of starting up a company is Euro 507. As for Lithuania, amendments of the legal base in order to reduce the time to set-up business to 3 working days and the cost to €100 are implemented. Legislative 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 (with some minor industry specific exceptions) are also taken.

### **3.2.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto**

The broad definition of some criteria to fulfil the ex-ante conditionalities might pose problems. For instance, how to assess whether a strategy is "comprehensive" or to interpret "actions linking suitable business development services and financial services" (related to conditionality No. 8.2)? In order to ensure the fulfilment of the ex-ante conditionalities, more guidelines and explanations of how criteria should be understood and assessed would be helpful to Member States.

In Italy horizontal and vertical coordination seems to be a weakness with respect to the fulfilment of the criteria linked to establishing a comprehensive strategy for start-ups. For instance, the Ministry for Economic Development is currently envisaging setting up measures in favour of innovative start-ups,<sup>85</sup> while the Ministry for Labour and Social Policies is planning to launch a programme to promote start-ups within immigrant communities.<sup>86</sup> At the same time, the regions are developing their own instruments to foster self-employment.

In Lithuania the main concerns regarding the fulfilment of the SBA ex-ante conditionality has to do with the fulfilment criterion dealing with the impact assessment procedure. Recently there have been attempts to introduce several SME-specific questions into the standard impact assessment procedure but they are not yet in place for reasons that remained to be identified.<sup>87</sup>

Beyond factors constraining the efforts to formally meet the fulfilment criteria, it is worth noting that the economic crisis is hampering progress on implementing the SBA principles, especially in Ireland and Italy where access to finance for SMEs has become a major concern.

<sup>83</sup> The European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI 388 of 2002) that came into operation on 7 August 2002.

<sup>84</sup> The procedure, introduced in April 2010, requires a single form ("comunicazione unica") to be sent electronically to the Companies Register, which uses it for registration and also submits it to the other relevant bodies (tax and social security offices).

<sup>85</sup> <http://www.sviluppoeconomico.gov.it>

<sup>86</sup> [http://www.lavoro.gov.it/lavoro/notizie/20111213\\_progetto\\_start\\_it\\_up.htm](http://www.lavoro.gov.it/lavoro/notizie/20111213_progetto_start_it_up.htm)

<sup>87</sup> At the moment these proposals are under consideration and are included in the draft of the new impact assessment questionnaire.

In both Italy and Ireland late payments in commercial transactions are an issue of concern. In Italy the tightening of the Internal Stability Pact has exacerbated the problem of delayed payments by the Public Administration, given that local authorities have to comply with severe budget constraints. They accumulated debts and then further worsen the State deficit.<sup>88</sup> Similarly, in Ireland the average length of late payments worsened (75 days) and most firms avoid applying an interest penalty for fear that it could negatively affect long-standing business relationships or result in clients moving their business elsewhere.

In Italy even if the fulfilment criteria are met and therefore the ex-ante conditionality is considered to be satisfied, it remains that wider regulatory and administrative simplification processes are necessary for the ex-ante conditionality to deliver its expected effects. Indeed, Italian firms face an excessive number of laws and several of them are of poor quality.

### **3.3. Thematic ex-ante conditionality No. 4**

4.1 Energy efficiency: Transposition of Directives Nos. 2010/31/EU on the energy performance of buildings (EPBD); 2006/32/EC on energy end-use efficiency and energy services; 2004/8/EC on the promotion of cogeneration based on a useful demand in the international energy market and amending Directive 92/42/EEC; compliance with art. 6 (1) of Decision No. 406/2009/EC on the effort of Member States to reduce their greenhouse gas emission reduction commitments up to 2020.

4.2 Renewable energy: Transposition of Directive No. 2009/28/EC on the promotion of the use of energy from renewable resources.

#### **3.3.1. Description and rationale for the ex-ante conditionality**

The fulfilment of thematic ex-ante conditionality No.4 requires the transposition of a set of European Directives related to the improvement of energy efficiency and the promotion of the use of energy from renewable resources. For a more comprehensive description of the rationale for the adoption of each Directive included in the ex-ante conditionality No.4, see Table 3 in Annex III.

#### **3.3.2. The fulfilment of the ex-ante conditionality: meeting the fulfilment criteria**

All three Member States are on the path to ensuring the transposition of the above-mentioned EU directives and to comply with Art. 6 (1) of Decision No. 406/2009/EC. In Lithuania recent changes were introduced in the national law (January–May 2012) in relation to the fulfilment of this conditionality. All the EU directives have been transposed by the Irish and Italian governments, except for Directive 2010/31/EU on the energy performance of buildings for which amendments to the existing legislation have been undertaken in order to comply with the new standards. An overview of the main actions undertaken by the three Member States to comply with the requirements concerning this conditionality is provided by Table 4 in Annex III.

<sup>88</sup> The abuse of exemption clauses, which will no longer be possible under the 2011 Directive, led to a situation where the Public Administration took a minimum of 92 days to make payment. See Comunicato ANCE 25/01/2011 n.122, "La recentissima direttiva europea in tema di ritardo dei pagamenti". Debt arrears accumulated by public bodies against the private sector now amount to approximately Euro 70-90 billion making it a priority for the incumbent government. See OIPA (2012).

### 3.3.3. Constraints to the fulfilment of the ex-ante conditionality and the objectives linked thereto

Concerns have arisen with regard to compliance with Directive 2010/31/EU on the energy performance of buildings. In Italy there is a clear need for a uniform national system for calculating the energy efficiency of buildings and for a single procedure that applies to both new and existing buildings. Most regions have not yet issued the necessary regulations to enforce national legislation.<sup>89</sup>

As for Ireland, there is the need to develop and implement a cohesive national plan to increase the number of low or zero carbon energy buildings in new and existing building stock; to further develop the exemplary role required of public sector buildings; and to ensure that BER Certificates<sup>90</sup> are included in all promotional material when properties are being advertised for sale or rent.<sup>91</sup>

Country contexts, from their climatic conditions to their capacity to access traditional energy sources, greatly affect the capacity of countries to improve their energy efficiency. In particular, progress on District Heating Systems (DH) is subject to different viability considerations. For instance, in Ireland the low population density, compared to continental Europe, is an obstacle to the development of DH. In Southern Italy, mild climatic conditions make DH less appealing.<sup>92</sup>

Implementation of adequate control and penalty systems can also be a challenge, especially in decentralised systems. For instance, in Italy a critical issue is the lack of adequate controls of the energy certificates issued at a regional level. In March 2012 only five regions out of 20 had started a pilot project for assessing the conformity of the certifications issued. Preliminary results show that the Directive on Energy Performance in Buildings has been often interpreted as a formal obligation with little attention to quality aspects. Among these regions, only two have a sanction mechanism for infringement of the directive.<sup>93</sup> In Ireland, instead, building control authorities are responsible for the enforcement of compliance with the directive at the local level. Audits are carried out regularly and a penalty point system is in place for defaulting parties.

The fact that the ex-ante conditionality is subject to different criteria that include the transposition of EU Directives, specific technical requirements and the elaboration of strategic documents is likely to make national self-assessment a rather complex and burdensome process.

For the establishment of a certification system of the energy performance of buildings, the lack of national databases concerning the quality of national building stocks poses a particular challenge to monitoring the implementation process of Directive 2010/31/EU. Only in some Member States, including the UK, the Netherlands, Ireland and Portugal, are such databases available.<sup>94</sup>

<sup>89</sup> Concerted Action Energy performance of building (2011a).

<sup>90</sup> The Building Energy Rating certificate assesses the energy performance of a building on a scale ranging from A to G with 'A' being the most energy efficient and 'G' being the least energy efficient – on the grounds of how efficient (or inefficient) the building is in relation to the amount of energy needed to provide users with expected comfort and functionality. According to the Directive 2010/31/EU, it is legally required by anyone selling or renting a property in all EU countries and should also be issued in case of new building and of public buildings with a total useful floor area over 500 m<sup>2</sup> (250 m<sup>2</sup> as of 9 July 2015).

<sup>91</sup> Department of Communication, Energy and Natural Resources (2011).

<sup>92</sup> EcoHeat4eu (2011).

<sup>93</sup> <http://www.edilbox.it/mercato-edilizia/49/la-certificazione-energetica-degli-edifici-in-italia.aspx>.

<sup>94</sup> Concerted Action Energy performance of building (2008).

Monitoring might also require the installation of technical devices. For instance, in the heating sector in Italy, the lack of meters in civil buildings makes it very difficult to quantify official values, which are based on measurements that are likely to underestimate the data of the energy balance.<sup>95</sup>

Measurement issues also pose serious problems, given that certificates issued by Member States are not comparable with each other and the calculation procedures used are sometimes ambiguous.<sup>96</sup> This might also be true at the national level, where regions apply different energy building standards (e.g. in Italy).

Country strategy documents might vary greatly even when they are prepared following a commonly agreed template. An illustration is given by the first generation of National Energy Efficiency Action Plans (NEEAPs) required under EU Directive 2006/32/EC on energy end-use and energy efficiency . The plans submitted were very heterogeneous in nature with regard to scope and coverage, the level of detail provided about measures, and expected savings. Moreover, savings estimates and details of the assumptions made in estimating them were absent in the majority of NEEAPs.<sup>97</sup>

---

<sup>95</sup> Tomassetti, G. (2010).

<sup>96</sup> Casa&Clima (2011).

<sup>97</sup> Eide, A. (2008).

## 4. CONCLUSIONS AND RECOMMENDATIONS

This note is intended to contribute to the current debate on the draft Common Provisions Regulation that was adopted on 6 October 2011 to frame the Cohesion Policy for the period 2014-2020. The purpose was to provide an assessment of the proposed ex-ante conditionality mechanism. Evidence was collected by means of a documentary analysis and analysis of three selected ex-ante conditionalities (including aspects of a fourth one).

Results of the assessment show that some aspects regarding the mechanism proposed by the European Commission are still unclear and might create confusion and uncertainty during their implementation. Some criticism has been voiced with regard to Annex IV of the draft CPR and in particular to the definition of the ex-ante conditionalities and the selection of the criteria proposed for their fulfilment. Major concerns have been raised with regard to two specific phases of the mechanism: i) the self-assessment process by Member States; ii) the suspension of funds by the European Commission.

In what follows, the major critical issues are pointed out and recommendations are provided for each.

### Critical issues and recommendations

- Sometimes the link between the ex-ante conditionalities and the objectives of the Cohesion Policy is not clear, especially in relation to achieving greater efficiency and effectiveness in Structural Funds expenditure.
  - A clear reference to the objectives of the Cohesion Policy pursued by ex-ante conditionalities (especially general) would better highlight how they complement other Regional policy features (e.g. monitoring the funds' management).
  - Making the rationale of ex-ante conditionalities which require the transposition of EU Directives clearer would avoid the risk of a pure compliance approach by the Member States.
- A high number of ex-ante conditionalities might overload Member States, especially those with a complex multilevel-governance structure.
  - During the programming process it is deemed important to identify an adequate number of general and thematic conditionalities applicable to the Operational Programme in order to avoid an increase in the administrative burden.
- In some cases, the level at which the self-assessment should be performed is not clear and this might lead to confusion between the roles of regional and national authorities.
  - The roles of national and regional authorities in the self-assessment procedure should be made clearer.
  - Regional authorities should be involved in the drafting of the PCs. Their contribution is essential to achieve consensus on the actions to be taken at national and regional levels in order to fulfil the ex-ante conditionalities.
- The self-assessment process might deliver mixed results if countries use different systems of measurement and quality standards.
  - The provision of national guidance on how self-assessment should be carried out, as well as access to common sources of information (such as national databases) is considered essential. Some criteria have been too broadly defined and / or appear to be insufficient to guarantee the effects expected from a fulfilled ex-ante conditionality.

- A thorough review of their definition is needed in order
    - to avoid misunderstandings in their fulfilment
    - to ensure that they effectively reflect conditions necessary for the effective and efficient implementation of Cohesion Policy.
- Some ex-ante conditionalities address broad policy reforms that take time to materialise.
  - Reconsider whether the planned timeframe for the fulfilment of the proposed conditions can apply indifferently to all conditionalities.
- The mechanism of the suspension of funds is not straightforward.
  - More clarifications are needed to explain:
    - on which basis payments will be suspended in the case the actions agreed are not implemented (and thus the ex-ante conditionality are not fulfilled) when the responsibility lies with the MSs and not with the regional authorities.
- Possibility of suspension of funds might trigger “strategic behaviour” or a “compliance approach” among MSs thus undermining the aim of the ex-ante conditionalities, which is to introduce preconditions for effective spending.
  - Increased dialogue between the European Commission, MSs and Regions is needed during the negotiation process and the implementation of the programmes with a view to adopting the ex-ante conditionalities as a learning tool for improving the implementation of EU interventions and not perceiving it solely as a punishment mechanism.
- The system of ex-ante conditionalities might penalise Regions with poor administrative capacity and widen the existing regional imbalances.
  - More support (through technical assistance) should be given to these Regions to help them in the assessment and fulfilment of the ex-ante conditionalities.

Some of these recommendations are currently discussed in the context of the finalisation of the Common Provisions Regulation.

The suggestion of extending the time frame for the fulfilment of ex-ante conditionalities – albeit in general rather than for those linked to “broad policy reforms” - was originally envisaged by amendment 670 tabled within the Committee on Regional Development<sup>98</sup>, but did not pass the subsequent vote by the Committee in July 2012.

However, the outcome of the vote in form of the negotiation mandate<sup>99</sup> reflects suggestions outlined above in several ways. For example, on the link between ex-ante conditionalities and Structural Funds effectiveness, amendment 48 notes that “an ex ante conditionality [...] shall be applied only where it has a direct link to, and an impact on, the effective implementation of the Funds covered by the CPR” without, however, giving further indications on what this entails.

Also, though not focusing on Regions with poor administrative capacities in particular, amendment 113 proposes that cohesion policy funds may benefit Member State authorities “including local and regional public authorities” in order to reinforce their administrative capacities. Importantly, concerning the partnership principle the mandate points to the same direction as the suggestions, i.e. the need to clarify the role of regional authorities and to guarantee their involvement in the next programming period.

---

<sup>98</sup> European Parliament (2012e).

<sup>99</sup> European Parliament (2012f).

## REFERENCES

- A SEED Europe (2008), *World Bank Conditionalities: poor deal for poor countries*, Amsterdam, The Netherlands.
- Bassanini, A., S. Scarpetta and I. Visco (2000), *Knowledge, Technology and Economic Growth: Recent Evidence from OECD Countries*, OECD Economics Department Working Papers, No. 259, OECD Publishing. <http://dx.doi.org/10.1787/536435460443>
- Bird, G. (2009), *Reforming IMF Conditionality: From 'streamlining' to 'major overhaul'*, in *World Economics*, Vol. 10 No. 3, July–September 2009.
- Casa&Clima (2011), *Nuova direttiva EPBD: lo stato di applicazione in Italia e in UE*, March, Rome.
- Comitato Termotecnico Italiano Energia e Ambiente (2012), *Attuazione della certificazione energetica degli edifici in Italia - Report 2012*, Rome.
- Committee of the Regions (2011a), *What role for local and regional authorities in the post-2013 budgetary framework? A territorial perspective on the interrelation between the Europe 2020 strategy, the Multiannual Financial Framework post-2013 and new EU economic governance*, a study carried out by European Policy Centre, October 2011, Brussels.
- Committee of the Regions (2011b), *The new Multiannual Financial Framework post-2013*, opinion of the Committee of the Regions, 93rd Plenary Session 14-15 December 2011, Brussels.
- Committee of the Regions (2012a), *EU Financial Regulation: Analysis of the simplification measures mentioned in both the proposal for an EU Financial Regulation and the Cohesion Policy legislative package*, note drafted by the European Policy Centre for the temporary ad hoc Commission on the EU budget of the Committee of the Regions, January 2012, Brussels.
- Committee of the Regions (2012b), *General Regulation on the Funds covered by the Common Strategic Framework*, Commission for Territorial Cohesion Policy COTER, 14.2.2012, Brussels.
- Committee of the Regions (2012c), *Opinion of the Committee of the Regions on the proposal for a general regulation on the funds covered by the Common Strategic Framework*, 95th plenary session, 2-4 May 2012, COTER-V-017, Brussels.
- Concerted Action Energy performance of building (2008), *Detailed Report on Training Requirements for Experts and Inspectors Supporting Transposition and Implementation of the Directive 2002/91/EC CA – EPBD (2005–2007)*, <http://www.epbd-ca.eu/>.
- Concerted Action Energy performance of building (2011a), *Implementation of the EPBD in Italy status November 2010*, <http://www.epbd-ca.eu/>.
- Concerted Action Energy performance of building (2011b), *Implementation of the EPBD in Ireland status November 2010*, <http://www.epbd-ca.eu/>.



- Council of the European Union (2008), *Conclusions on "Think Small First – A Small Business Act for Europe*, 1 and 2 December 2008, Brussels.
- Council of the European Union (2012a), *Cohesion Policy legislative package - Presidency compromise on Ex Ante Conditionality*, Interinstitutional File: 2011/0276 (COD), Brussels 20 April 2012.
- Council of the European Union (2012b), *Cohesion Policy legislative package – Explanatory note: Ex-ante conditionalities suspension of payments*, Interinstitutional File: 2011/0276 (COD), Brussels 20 April 2012.
- CPMR General Secretariat (2011), *Conditionality in Regional Policy after 2013: The Challenges for the Regions*, Technical Paper, Rennes, France.
- Department of Communication, *Energy and Natural Resources (2011), A second National Energy Efficiency Action Plan for Ireland*, Dublin.
- EcoHeat4eu (2011), *Recommendation report for Italy, 2011*, available at <http://ecoheat4.eu/en/Country-by-country-db/Overview/>
- Eide A. (2008), *Implementing the Energy Services Directive 2006/32/EC: State of Play*, Berlin.
- Electricity Regulation Act 1999 and Gas (Interim) (Regulation) Act 2002 (Gas) Levy Order 2010 published in the "Iris Oifigiúil" of 17<sup>th</sup> December, 2010.
- Environment Protection Agency (2012), *Ireland National Inventory Report 2012*, available at <http://coe.epa.ie/ghg/nirdownloads.jsp>.
- European Commission (2006), *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 L210, 31.7.2006*.
- European Commission (2008), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - "Think Small First" A "Small Business Act" for Europe*, COM (2008) 394 final, Brussels.
- European Commission (2010a), *Lessons from Shared Management in Cohesion, Rural Development and Fisheries Policies*, Report prepared by CSIL on behalf of DG Regio - Directorate C Policy Development, Brussels.
- European Commission (2010b), *Investing in Europe's future: Fifth Report on Economic, Social and Territorial Cohesion*, Report from the Commission, Brussels.
- European Commission (2010c), *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee, The Committee of the Regions and the National Parliaments: The EU Budget Review*, COM (2010) 700 final, Brussels.
- European Commission (2010d), *Communication from the Commission to the European Parliament, The European Council, The Council, The European Central Bank, The*



*European Economic and Social Committee and The Committee of the Regions: Enhancing Economic Policy Coordination for Stability, Growth and Jobs – Tools for Stronger EU Economic Governance*, COM (2010) 367/2, Brussels.

- European Commission (2010e), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: Conclusions of the fifth report on economic, social and territorial cohesion: the future of Cohesion Policy*, COM(2010) 642 final Communication, Brussels.
- European Commission (2010f), *Europe 2020: Integrated guidelines for the economic and employment policies of the Member States*, Brussels.
- European Commission (2011a), *A Budget for Europe 2020: the current system of funding, the challenges ahead, the results of stakeholders consultation and different options on the main horizontal and sectoral issues*, Commission Staff Working Paper, accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Budget for Europe 2020, Brussels.
- European Commission (2011b), *Cohesion Policy 2014-2020 – investing in growth and jobs*, Brussels.
- European Commission (2011c), *Communication from the Commission: Annual Growth Survey 2012*, VOL. 1/5, Brussels.
- European Commission (2011d), *Ex-ante Conditionality in Cohesion Policy*, Second Meeting of the Conditionality Task Force, 16 March 2011.
- European Commission (2011e), *Ex-ante Conditionality in Cohesion Policy*, Third Meeting of the Conditionality Task Force, 8 April 2011.
- European Commission (2011f), *Impact Assessment - Part II: Annexes*, Commission Staff Working Paper, accompanying the document Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006, 6 October 2011, SEC(2011) 1141 final.
- European Commission (2011g), *Past Experiences with preconditions for effective implementation of Cohesion Policy*, Meeting of the Conditionality Task Force, 11 February 2011.
- European Commission (2011h), *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion*

*Fund and repealing Regulation (EC) No 1083/2006*, COM (2011) 615 final/2, 14.3.2012, Corrigendum and replacing the document COM(2011) 615 of 6.10.2011, Brussels.

- European Commission (2011i), *Rationale for internal conditionality for ESF, ERDF and Cohesion Fund*, Meeting of the Conditionality Task Force, 11 February 2011.
- European Commission (2011l), *Report from the Commission on the work of the Conditionality Task Force*, May 2011.
- European Commission (2011m), *Results of the public consultation on the conclusions of the Fifth Report on Economic Social and Territorial Cohesion*, Commission Staff Working Paper, Brussels.
- European Commission (2011n), *Structural Reform Conditionality in Cohesion Policy*, Second Meeting of the Conditionality Task Force, 16 March 2011.
- European Commission (2011o), *Proposal for a Regulation of the European Parliament and of the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006*, Brussels, 6.10.201, COM(2011) 614 final.
- European Commission (2011p), *Communication of the Commission — Temporary Union Framework for State Aid Measures to support access to finance in the current financial and economic crisis (Text with EEA relevance)*, published in the official journal of the European Union 2011/C 6/05, Brussels.
- European Commission (2011q), *Thinking Big for Small Businesses - What the EU does for SMEs*, 2011 Edition, Brussels.
- European Commission (2012a), *Ex-Ante Conditionality: Fiche No. 10*, Working document, Brussels.
- European Commission (2012b), *The partnership principle in the implementation of the Common Strategic Framework Funds - elements for a European Code of Conduct on Partnership*, Commission Staff Working Document, SWD (2012) 106 final, Brussels.
- European Commission (2012c), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Simplification Agenda for the MFF 2014-2020*, Brussels, 8.2.2012, COM(2012) 42 final, Brussels.
- European Commission (2012d), *Proposal for a Regulation of the European Parliament and of the Council on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006*, Brussels, 14.3.2012, COM(2011) 612 final/2, corrigendum and replacing the document COM(2011) 612 of 6.10.2011, Brussels.
- European Commission (2012e), *Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006*, Brussels, 14.3.2012, COM(2011) 607 final/2, corrigendum and replacing the document COM(2011) 607 of 6.10.2011 Brussels..

- European Commission (2012f), *Frequently Asked Questions (FAQ) about the “Small Business Act” for Europe (SBA)*.  
[http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/sba\\_faq\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/docs/sba/sba_faq_en.pdf)
- European Commission, DG Competition (October 2011), *The effects of temporary State aid rules adopted in the context of the financial and economic crisis*, Commission Staff Working Paper, Brussels.
- European Commission, DG Enterprise (2010), *Review of the effectiveness of European Community legislation in combating late payments*, implemented by HOCHE, Brussels.
- European Communities (Energy Performance of Buildings [EPBD]) Regulations 2006 published by the stationery office Dublin and the Building Control (Part L Amendment) Regulations 2007.
- European Court of Auditors (2011), *Opinion No. 7/2011 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, OJ C 47, 17.2.2012, Brussels.
- European Parliament (2011a), *Comparative study on the visions and options for Cohesion Policy after 2013*, study carried out by the European Policies Research Centre (EPRC), Brussels.
- European Parliament (2011b), *The Future of Cohesion Policy after 2013*, Note, Brussels.
- European Parliament (2012a), *Opinion of the Committee on Transport and Tourism for the Committee on Regional Development on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, 25 June 2012, Brussels.
- European Parliament (2012b), *Working Document on proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, COM (2011) 615 final/2, Committee on Regional Development, 24 January 2012, Brussels.
- European Parliament (2012c), *Draft report amending the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and*

*Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, COM (2011) 615 final/2, Committee on Regional Development, 14 May 2012, Brussels.

- European Parliament (2012d), *Moving towards a more Result/Performance-Based Delivery System in Cohesion Policy*, study carried out by CSIL on request of European Parliament's Committee on Regional Development, Brussels.
- European Parliament (2012e), *Amendments 444 – 782 : draft report Lambert van Nistelrooij, Constanze Angela Krehl on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, COM (2011) 615 final/2, Committee on Regional Development, 4 June 2012, Brussels.
- European Parliament (2012f), *MANDATE for opening inter-institutional negotiations adopted by the Committee on Regional Development at its meeting on 11 July 2012 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1083/2006*, 11 July 2012, Brussels.
- European Policy Research Centre (2011), *EU Cohesion Policy in a Global Context: Comparative Study on EU Cohesion and Third Country and International Economic Development Policies*, Final Report, Glasgow, United Kingdom.
- European Union (2006), *Consolidated version of the Treaty on European Union and of the Treaty establishing the European Community*, Official Journal of the European Union, C 321 E/1, 29.12.2006.
- European Union (Biofuel Sustainability Criteria) Regulations 2012, published in “*Iris Oifigiúil*” of 7<sup>th</sup> February, 2012.
- Hjerp, P., Medarova-Bergstrom, K, Skinner, I., Mazza, L. and ten Brink, P. (2011) *Cohesion Policy and Sustainable Development-Policy Instruments*, Supporting Paper 5. A report for DG Regio, February 2011.
- Institute for European Environmental Policy (2012), *Walking the talk - practical options for making the 2014-2020 EU MFF deliver on climate change*, Final report for the Dutch Ministry of Infrastructure and the Environment, Brussels.
- International Monetary Fund (2010), *Application of Structural Conditionality — 2009 Annual Report*, prepared by the Strategy, Policy, and Review Department in consultation with other Departments.

- Istituto Superiore per la Protezione e la Ricerca Ambientale (2010), *Italian Greenhouse Gas Inventory 1990-2008- National Inventory Report 2010*, Rome
- Jeanne O., Ostry Jonathan D., Zettelmeyer J. (2008), *A Theory of International Crisis Lending and IMF Conditionality*, IMF Working Paper.
- Koeberle, S. G. (2004), *Conditionality: under what conditions?*, in S. Koeberle, H. Bedoya, P. Silarszky, & G. Verheyen (Eds.), *Conditionality revisited* (pp. 57–84). Washington: World Bank.
- OECD (2003), *Aid Effectiveness and Selectivity: Integrating Multiple Objectives into Aid Allocations*, OECD DAC/Development Centre Experts' Seminar, 10 March 2003, Paris.
- OECD (2008), *2008 Survey on Monitoring the Paris Declaration making Aid more effective by 2010*, Paris.
- OECD (2009a), *Compendium of Country Examples and Lessons Learned from Applying the Methodology for Assessment of National Procurement Systems*, Volume I – sharing experiences, Off-print of the Journal on Development 2008, Volume 9, No. 2, Paris.
- OECD (2009b), *Managing for Development Results*, Policy Brief, March 2009, Paris.
- OECD (2009c), *How Regions grow*, Policy brief, Paris.
- OECD (2011a), *Aid Effectiveness 2005-10: Progress in Implementing the Paris Declaration*, Paris.
- OECD (2011b), *Summary Note on Conditionality*, prepared for the Working Party on Aid Effectiveness - Task Team on Conditionality, 4<sup>th</sup> High level Forum on Aid Effectiveness, 29 November – 1 December 2011, Busan, Korea.
- OECD Development Centre (2008), *A Farewell to Policy Conditionality?*, Policy Insights, No. 74, Paris.
- Öhler H., Nunnenkamp P., Dreher A., (2011), *Does Conditionality Work? A Test for an Innovative US Aid Scheme*, CESIFO Working Paper No. 3454, Category 2: Public Choice, Heidelberg, Germany.
- OIPA (2012), *Osservatorio su Impresa e Pubblica Amministrazione*, February, <http://www.oipamagazine.eu/>
- State Aid Unit Department of Enterprise, *Trade and Employment (2007), State Aid - A Guide for Public Bodies in Ireland*, May 2007, Dublin.
- The European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI 388 of 2002) that came into operation on 7 August 2002.
- The Italian Ministry for the Economic Development (2012), *Linee guida per l'applicazione del Decreto del Ministero dello Sviluppo Economico 5 September 2011 – Cogenerazione ad Alto Rendimento (CAR)*, Rome.
- The Polish Ministry of Regional Development - Department of Structural Policy Coordination (2012), *Cohesion Policy Programme of the Polish Presidency of the Council of the European Union - progress report*, Poland.

- Tomassetti, G. (2010), *Identificazione e Quantificazione del Calore Prodotto da Fonti Rinnovabili*, Federazione Italiana per l'uso Razionale dell'Energia, Rome.
- UEAPME (2006), *Late payment*, available at [http://www.ueapme.com/IMG/pdf/0606\\_pp\\_late\\_payments.pdf](http://www.ueapme.com/IMG/pdf/0606_pp_late_payments.pdf).
- UEAPME (2012), *Position on the legislative proposals for laying down common provisions on the European Regional Development Fund (ERD), European Social Fund (ESF), Territorial Cooperation Fund (TCF), Social Change and Innovation (PSCI), European Grouping Territorial Cooperation (EGTC), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD) and European Maritime Fishery Fund (EMFF)*, position paper, 15 February 2012, Brussels.
- World Bank (2005a), *Review of World Bank Conditionality*, operations policy and country services, USA.
- World Bank (2005b), *Review of World Bank conditionality: The theory and practice of conditionality: a literature review*, Development Economics, USA.
- World Bank (2005c), *Conditionality revisited: concepts, experiences and lessons*, USA.
- World Bank (2007), *Conditionality in development policy lending*, operations policy and country services, 15 November 2007, USA.
- World Bank (2010), *Poverty Reduction Support Credits An Evaluation of World Bank Support*, Washington, USA.



## ANNEX I: AN OVERVIEW OF THE OPERATIONAL ARCHITECTURE

### Phase I – Preparation of programming documents (Operational Programme and Partnership Contract)

During the preparation of programming documents, Member States are required to carry out a self-assessment process aimed at verifying whether “*the applicable ex-ante conditionalities are fulfilled*” (art. 17.2). It consists of the following three steps:<sup>100</sup>

- Member States shall assess the *applicability* of the thematic and general ex-ante conditionalities, laid down in the fund-specific rules<sup>101</sup>, to each of the specific objectives for an investment priority or a Union priority. As envisaged in a note by the European Commission an ex-ante conditionality is applicable to a priority of a given programme only where there is a “direct and genuine link to and a direct impact on the effective and efficient achievement of the specific objectives for an investment priority or a Union priority”.<sup>102</sup> It is worth noting that not every specific objective of an Operational Programme is necessarily linked to an ex-ante conditionality laid out in the Fund-specific rules.<sup>103</sup>
- Member States shall assess whether the criteria associated with the applicable ex-ante conditionalities as set out in the fund-specific rules are fulfilled.
- For each ex-ante conditionality not fulfilled at the time of submission of the Partnership Contract, Member States are required to provide, in the Operational Programme, a detailed description of the actions to comply with it, a timetable for their implementation (Art. 87.2.e), as well as identification of the bodies responsible<sup>104</sup>. At the same time, a summary of the actions to be taken at national or regional level shall be presented in the Partnership Contract including the timetable for their implementation (Art. 14.d.ii) to ensure the ex-ante conditionalities are fulfilled not later than two years after the adoption of the Partnership Contract or by 31 December 2016, whichever is earlier (Art. 17.3 of the draft CPR).

### Phase II – Negotiation Process

As part of the negotiation process, the European Commission is required to assess the consistency and the adequacy of the information provided by the Member States on:<sup>105</sup>

- The applicability of ex-ante conditionalities to the specific objectives pursued within the priorities of each programme;
- The fulfilment of the applicable ex-ante conditionalities. This is done on the basis of whether the fulfilment criteria are met.

<sup>100</sup> European Parliament (2012c).

<sup>101</sup> Fund-specific rules refer to the provisions laid down in or established on the basis of Part Three of the draft CPR Regulation or a specific or generic regulation governing one or more of the CSF Funds.

<sup>102</sup> Council of the European Union (2012a), p.2.

<sup>103</sup> Council of the European Union (2012a), p.2.

<sup>104</sup> Council of the European Union (2012b), p. 3.

<sup>105</sup> Council of the European Union (2012b), p. 3.

According to art. 17.5 of the draft CPR, when adopting a programme the European Commission may decide to suspend all or part of interim payments to the programme if there is a substantial non-fulfilment of one or more of the criteria related to the selected ex-ante conditionalities and when there is a high risk of a negative impact on the achievement of the specific objectives to which an ex-ante conditionality is related<sup>106</sup>. The suspension would concern all or part of the interim payments to a priority in the affected programme. The Commission would have to set out the grounds and justification for the suspension as part of the suspension clause within the decision of adopting the programme.<sup>107</sup>

### **Phase III – Reporting**

The actions described by Member States in the Operational Programmes should be examined by the Monitoring Committee (art. 100.1.h of the draft CPR). Member States are required to set out, in the annual reports on implementation of the Operational Programme, actions taken to fulfil the relevant ex-ante conditionalities (art. 44.2 of the draft CPR).<sup>108</sup> Moreover, they shall report the progress made towards the fulfilment of the ex-ante conditionalities in the Progress Reports on the implementation of the Partnership Contract due by 30 June 2017 and by 30 June 2019 (art. 46.2.c of the draft CPR). The latter will be taken into account during the Annual Meetings to be organised between the Commission and each Member State (art. 45 of the draft CPR).

### **Phase IV – Suspension of funds**

If a Member State fails to undertake actions by the deadline set out in the Operational Programme (art. 17.5 of the draft CPR), the Commission may suspend all or part of the interim payments at the level of priority axes or Operational Programmes (art. 134.1 of the draft CPR) after having provided the Member State with the opportunity to present its observations (art. 134.2 of the draft CPR) and the suspension may be lifted only after the Member State has taken the necessary measures (art. 134.3 of the draft CPR).

It is worth noting that the assessment of the ex-ante conditionalities performed by the European Commission is limited to checking the fulfilment of the corresponding criteria, i.e. whether the agreed actions have been duly implemented according to the agreed time schedule. It is not intended to assess the quality of the actions proposed to meet the fulfilment criteria.

An overview of the key elements concerning ex-ante conditionalities to be included in the strategic and operational documents is provided in the table below.

---

<sup>106</sup> Council of the European Union (2012b).

<sup>107</sup> Council of the European Union (2012b).

<sup>108</sup> European Parliament (2012c).



**Table 1: Key elements to be included in legal, strategic and operational documents**

Legal/Strategic and operational documents	Key elements
Fund Specific Rules	Definition of the ex-ante conditionalities for each CSF Fund (art. 17.1)
Partnership Contract	A summary of the assessment of the fulfilment of ex-ante conditionalities. For each ex-ante conditionality not fulfilled a summary of the actions to be taken at national and regional level, including a timetable for their implementation (art. 17.3 and art. 14.d)
Operational Programme under the "Investment for growth and jobs" goal	Detailed actions to fulfil ex-ante conditionalities, including a timetable for their implementation (art. 17.4 and art. 87.2.d)
Implementation report	Actions taken to fulfil the ex-ante conditionalities and any issues affecting the performance of the programme, as well as the corrective measures taken (art. 44.2)
Progress Report	Progress made towards the fulfilment of the ex-ante conditionalities (art. 46.2.c)

**Source:** Authors.



## ANNEX II: STATUS OF AMENDMENTS QUOTED IN THE REPORT

The table below indicates the status of the amendments quoted in the report.

**Table 2: Status of amendments tabled within the Committee on Regional Development of the European Parliament related to Art. 17**

Amendments	Vote outcome	Amendments in Mandate as voted in July 2012
AM 660, 661, 663	Covered by Compromise AM 14 which was adopted	AM 48 - 51
AM 664, 670, 680, 685, 689	Fell due to the adoption of Compromise AM 14	
AM 691	Rejected	

The table below reproduces the new text of AM 48-51 proposed in the July 2012 Mandate

**Table 3: Amendments adopted in the Mandate (11 July 2012)**

Article	Amendment	Text proposed by the EC	Amendment
Art. 17.1	48	<i>Ex ante</i> conditionalities shall be defined for each CSF Fund in the Fund-specific rules.	<i>Ex ante</i> conditionalities shall be defined for each Fund covered by the CPR in the Fund-specific rules. <i>An ex ante conditionality is a prerequisite and shall be applied only where it has a direct link to, and an impact on, the effective implementation of the Funds covered by the CPR.</i>
Art. 17.2	49	Member States shall assess whether the applicable <i>ex ante</i> conditionalities are fulfilled.	Member States shall, <i>in accordance with Article 4(4)</i> , assess whether the applicable <i>ex ante</i> conditionalities <i>laid down in the Fund-specific rules have been</i> fulfilled.
Art. 17.4	50	Member States shall set out the detailed actions relating to the fulfilment of <i>ex ante</i> conditionalities, including the timetable for their implementation, in the relevant programmes.	Member States shall set out the detailed actions <i>to be carried out within the set timeframe</i> relating to the fulfilment of <i>ex ante</i> conditionalities, including the timetable for their implementation, in the relevant programmes.
Art. 17.5	51	The Commission shall assess the information provided <i>on</i> the fulfilment of <i>ex ante</i> conditionalities in the framework of its assessment of the Partnership Contract and programmes. <i>It</i> may decide, when adopting a programme, to suspend all or part of interim payments to the programme pending the satisfactory completion of actions to fulfil an <i>ex ante</i> conditionality. The failure to complete actions to fulfil an <i>ex ante</i> conditionality by the deadline set out in the programme shall constitute a basis for suspending payments by the Commission.	The Commission shall assess the <i>consistency of the</i> information provided <i>in relation to the applicability and</i> fulfilment of <i>ex ante</i> conditionalities in the framework of its assessment of the Partnership Contract and programmes. <i>In accordance with the Fund-specific rules, the Commission</i> may decide, when adopting a programme, to suspend all or part of <i>any</i> interim payments to the <i>respective</i> programme, pending the satisfactory completion of actions to fulfil an <i>ex ante</i> conditionality <i>which is instrumental to the achievement of that programme's objectives</i> . The failure to complete actions to fulfil an <i>ex ante</i> conditionality by the deadline set out in the programme shall constitute a basis for suspending payments by the Commission, <i>in accordance with the Fund-specific rules. The suspension of payments shall be lifted without delay once the Member State fulfils the ex ante conditionalities applicable to the programme.</i>

## ANNEX III: AN IN DEPTH ANALYSIS OF THREE EX-ANTE CONDITIONALITIES

**Table 4: The ex-ante conditionalities analysed and the corresponding fulfilment criteria**

The ex-ante conditionality	The fulfilment criteria
<b>General ex-ante conditionality No. 5:</b> The existence of a mechanism that ensures effective implementation and application of EU State aid law.	Effective implementation and application of EU State aid law is ensured through: <ul style="list-style-type: none"> <li>• Institutional arrangements for the implementation, application and supervision of EU State aid law;</li> <li>• A strategy for training and dissemination of information for staff involved in the implementation of the funds;</li> <li>• Measures to strengthen the administrative capacity for implementation and application of EU State aid rules.</li> </ul>
<b>Thematic ex-ante conditionality No.3:</b> <b>3.1</b> Specific actions have been carried out for the effective implementation of the Small Business Act (SBA) and its Review of 23 February 2011 including the "Think Small First" principle.	The specific actions include: <ul style="list-style-type: none"> <li>• 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);</li> <li>• Measures to reduce the time to set-up business to three working days and the cost to €100;</li> <li>• Measures to reduce the time needed to get licenses and permits to take up and perform the specific activity of an enterprise to three months;</li> <li>• 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.</li> </ul>
<b>3.2</b> Transposition into 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.	Transposition of that Directive in accordance with art. 12 of the Directive (by 16 March 2013).
<b>Thematic ex-ante conditionality No. 8.2:</b> Self-employment, entrepreneurship and business creation: the existence of a comprehensive strategy for inclusive start-up support in accordance with the Small Business Act and in coherence with the Employment guidelines and the Broad Guidelines for the economic policies of the Member States	Comprehensive strategy in place which will include: <ul style="list-style-type: none"> <li>• Measures to reduce the time to set up businesses to three working days and the cost to €100;</li> <li>• 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;</li> <li>• Actions linking suitable business development services and financial services</li> </ul>

The ex-ante conditionality	The fulfilment criteria
and of the Union, regarding the enabling conditions for job creation.	(access to capital), including outreach strategies for disadvantaged groups and areas.
<p><b>Thematic ex-ante conditionality No.4:</b></p> <p><b>4.1</b> Energy efficiency: Transposition into national law of Directive (2010/31/EU) of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings in accordance with art. 28 of the Directive.</p> <p>Compliance with art. 6(1) of Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the European Union's greenhouse gas emission reduction commitments up to 2020.</p> <p>Transposition into national law of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services.</p> <p>Transposition into national law of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful demand in the internal energy market and amending Directive 92/42/EEC.</p>	<ul style="list-style-type: none"> <li>• Implementation of minimum requirements related to the energy performance of</li> <li>• buildings required in line with art. 3, art. 4 and art. 5 of Directive 2010/31/EU</li> <li>• Adoption of measures necessary to establish a system of certification of the energy performance of buildings in accordance with art. 11 of Directive 2010/31/EU;</li> <li>• Realisation of the required rate of renovation of public buildings;</li> <li>• Final customers are provided with individual meters;</li> <li>• Efficiency in heating and cooling is promoted according to Directive 2004/8/EC.</li> </ul>
<p><b>4.2.</b> Renewable energy: Transposition into national law of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives (2001/77/EC) and (2003/30/EC).</p>	<ul style="list-style-type: none"> <li>• A Member State has put in place transparent support schemes, priorities in grid access and in dispatching, standard rules relating to the bearing and sharing of the costs of technical adaptations that have been made public;</li> <li>• A Member State has adopted a national renewable energy action plan in accordance with art. 4 of Directive 2009/28/EC.</li> </ul>

Source: Authors.<sup>109</sup><sup>109</sup> On the basis of Annex IV of the CPR, European Commission (2011h).

**Table 5: Rationale for introducing the ex-ante conditionalities under analysis**

Ex-ante conditionalities	Rationale
<b>Ex-ante conditionality No. 5</b>	<p>The European Commission has the task of monitoring proposed and existing State aid measures by Member States to ensure that they do not distort intra-Union competition and trade to an extent contrary to the common interest. Support measures are, however, part of the political steering instruments available to Member States.<sup>110</sup> Because the State aid ban can clash with Member States' development priorities, some important horizontal and sector specific exemptions have been included.<sup>111</sup></p> <p>The 2008 financial crisis required the adaptation of the existing EU state aid rules (e.g. establishment of the Temporary Union Framework).<sup>112</sup> From October 2008 until 2012 specific State aid provisions guided governments in their support measures to financial institutions and firms that were not in difficulty on 1 July 2008 but entered in difficulty thereafter as a result of the crisis<sup>113</sup>. The objective of these interim measures was to guarantee financial stability in the EU,<sup>114</sup> but several questions remain open as to the phasing out of these State aids given the fragile situation of the financial sector in many Member States.<sup>115</sup> The European Commission State Aid Scoreboard<sup>116</sup> provides detailed information on State aid expenditures and measures in each Member State. It shows that the trend in State aid consistently decreased from 1992 to the beginning of the financial crisis, whereas it increased afterwards.</p> <p>State aid legislative acts are very complex and subject to continuous evolution depending upon the conditions of the single market. Moreover, it must also be remembered that at the national level there are a variety of bodies that may take legislative, administrative or judicial actions in this specific area and that Regional aid is assimilated into State aid. When a new State aid scheme is being developed the Commission must be notified and must approve the scheme before it is put into effect.<sup>117</sup> Only after approval by the Commission may an aid measure be implemented. Therefore, it is crucial that each Member State establishes its national implementation mechanism (e.g. setting up of coordination units and advisory bodies, identification of notification responsibilities), and ensures effective dissemination of legislative changes throughout its administration.</p>

<sup>110</sup> State aid may take different forms: subsidies, grants, concessional loans, equity funds, guarantee schemes, fiscal exemption, in-kind contributions or subsidised tariffs for public services.

<sup>111</sup> The former include aid that is of common interest and does not distort intra-Union competition and trade, whereas the latter concern agriculture, fishery, coal production and transport.

<sup>112</sup> European Commission (2011p),.

<sup>113</sup> European Commission, DG Competition (October 2011).

<sup>114</sup> In 2007 total EU aid amounted to Euro 67 billion, or 0.5% of GDP, while in 2009 it was Euro 427.4 billion, or 3.6% of GDP.

<sup>115</sup> Ursula O'Dwyer of Philip Lee, "EU state aid and the banking crisis", <http://www.cdr-news.com/expert-views/1689-eu-state-aid-and-the-banking-crisis>.

<sup>116</sup> Available at [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/studies\\_reports.html](http://ec.europa.eu/competition/state_aid/studies_reports/studies_reports.html)

<sup>117</sup> A State aid scheme put into effect without notification and approval is illegal by virtue of non-notification and lack of approval alone.

Ex-ante conditionalities	Rationale
<b>Ex-ante conditionality No.3</b>	<p>The costs of regulations have a greater impact on SMEs, due to their size and scarce resources, than on their bigger competitors. At the same time, the benefits of regulations tend to be more evenly distributed among companies of different sizes. The 'Think Small First' principle means that SMEs must be consulted before new laws are introduced that could have distortionary effects on them. It requires the use of specific instruments such as the SME test, SME-specific provisions and the consultation of SME stakeholders.<sup>118</sup></p> <p>Among the actions related to the implementation of the SBA, the introduction of the transposition of Directive 2011/7/EU<sup>119</sup> as a specific ex-ante conditionality is necessary because late payments in commercial transactions between companies or between businesses and public authorities still happen in the EU.<sup>120</sup> Clearly, the risk of negative effects increases in periods of economic downturn and disproportionately increases the financial vulnerability of SMEs.</p>
<b>Ex-ante conditionality No. 8.2</b>	<p>In 1997 the Commission adopted a recommendation proposing measures to accelerate and simplify start-ups.<sup>121</sup> Over the years administrative simplification has remained a priority on the EU Agenda as a key to realising Europe's entrepreneurial potential. The issue of reducing times and costs to start-up a company is further elaborated in the SBA<sup>122</sup> and the Competitiveness Council Action Plan for Small Business, which set a three working day time limit for setting up a new business.<sup>123</sup> In this respect, the Commission has continued to track the progress of the Member States in these areas through the yearly National Progress Reports and meetings with the National Start-up Coordinators.</p> <p>Employment guidelines were one of the three pillars for the Integrated Guidelines for 2008-2010. Member States agreed to adopt policies that enabled full employment, improved quality and productivity at work, and strengthened social and territorial cohesion. Three priority fields of action were put forward by the Commission: i) Attract more people in employment, increase labour supply and modernise social protection systems, ii) Improve adaptability of workers and enterprises to the economic situation and iii) Invest in human capital through better education and skills. These measures are aimed at building an inclusive labour market.<sup>124</sup></p>

<sup>118</sup> European Commission (2011q)

<sup>119</sup> It is built upon a previous EC Directive (2000/35/EC) on combating late payment in commercial transactions. Based on a commitment in the SBA, substantial changes were put forward, including: harmonisation of payment periods by public authorities to businesses, contractual freedom in businesses' commercial transactions, introduction of a minimum fixed amount of €40 as a compensation for recovery costs, and an increase in the statutory interest rate for late payment to at least eight percentage points above the European Central Bank's reference.

<sup>120</sup> European Commission, DG Enterprise (2010)

<sup>121</sup> European Commission Recommendation 97/344/EC on improving and simplifying the business environment for business start-ups, 97/344/EC, 22 April 1997, Official Journal L 145 , 05/06/1997 P. 0029 – 0051.

<sup>122</sup> European Commission (2008).

<sup>123</sup> Council of the European Union (2008).

<sup>124</sup> Council of the European Union Decision 2008/618/EC of 15 July 2008 on guidelines for the employment policies of the Member States, Official Journal of the European Union L 198/47, 26.7.2008.



Ex-ante conditionalities	Rationale
<b>Ex-ante conditionality No.4</b>	
Directive 2010/31/EU on the energy performance of buildings	The former Directive on the Energy Performance of Buildings (EPBD), adopted in 2002, was the main legislative instrument affecting energy use and efficiency in the building sector in the EU. In response to the growing importance of energy considerations across Member States and in order to reduce the Union's energy dependency and greenhouse gas emissions, a new Directive (2010/31/EU), on the energy performance of buildings was adopted and came into force on 9 July 2010.
Compliance with art. 6 (1) of Decision No. 406/2009/EC on the effort of Member States to reduce their greenhouse gas emission reduction commitments up to 2020	Art. 6 (1) of Decision No. 406/2009/EC requires Member States to include their progress in reducing greenhouse gas emissions in the reports they submit pursuant to art. 3 of Decision No. 280/2004/EC. <sup>125</sup> The rationale for this comes from the requirements of the UNFCCC <sup>126</sup> and the Kyoto Protocol and, thus, from the need for thorough monitoring and regular assessment of EU greenhouse gas emissions so that the EU may reduce greenhouse gas emissions to 8% below the 1990 levels between 2008 and 2012.
Directive 2006/32/EC on energy end-use efficiency and energy services	It includes an indicative energy savings target for Member States, obligations of national public authorities vis-à-vis energy savings and energy efficient procurement, and measures to promote energy efficiency and energy services. The Directive's requirements include the submission of a first Energy Efficiency Action Plan (EEAP) no later than 30 June 2007, a second one no later than 30 June 2011, and a third one no later than 30 June 2014.
Directive 2004/8/EC on the promotion of cogeneration based on a useful demand in the international energy market and amending Directive 92/42/EEC	The energy-saving potential of cogeneration <sup>127</sup> is currently under-utilised in the European Union. The purpose of this Directive is to facilitate the installation and operation of electrical cogeneration plants in order to save energy and combat climate change.

<sup>125</sup> Art. 6 (1) of Decision adopted jointly by the European Parliament and the Council No. 406/2009/EC: "Member States shall, in their reports submitted pursuant to Article 3 of Decision No 280/2004/EC, include the following (a) Their annual greenhouse gas emissions resulting from the implementation of art. 3; (b) the use, geographical distribution and types of, as well as the qualitative criteria applied to, credits used in accordance with art. 5; (c) projected progress towards meeting their obligations under this Decision, including information on national policies and measures and national projections; (d) information on planned additional national policies and measures envisaged with a view to limiting greenhouse gas emissions beyond their commitments under this Decision and in view of the implementation of an international agreement on climate change, as referred to in art. 8".

<sup>126</sup> United Nations Framework Convention on Climate Change.

<sup>127</sup> Cogeneration is a technique allowing for the production of both heat and electricity. The heat is in the form of high pressure water vapour or hot water. An electricity/heat cogeneration plant operates by means of gas turbines or engines. Natural gas is the form of primary energy most commonly used for fuel cogeneration plants. However, renewable energy sources and waste can also be used.

Ex-ante conditionalities	Rationale
<p>Directive 2009/28/EC on the promotion of the use of energy from renewable resources</p>	<p>This Directive establishes a common framework for the use of energy from renewable sources in order to limit greenhouse gas emissions and to promote cleaner transport. To this end, Member States are asked to set up national action plans that establish the share of energy from renewable sources consumed in transport, as well as in the production of electricity and heating, for 2020. These plans will also establish procedures for the reform of planning and pricing schemes and access to electricity networks, promoting energy from renewable sources.</p>

**Source:** Authors.

**Table 6: Ex-ante conditionality No.4: the transposition of the EU directives in the three Member States**

EU Directive	Key actions
Directive 2010/31/EU on the energy performance of buildings	<p><b>Italy</b> was amongst the very first European countries to ensure the transposition of the EPDB Directive of 2002. However, the technical requirements necessary for implementing energy certification were not specified until 2009, when Ministerial Decree 26/06/2009 issued the “National guidelines for energy certification”. In the absence of a clear legislative framework, some regions developed their own guidelines. This contributed to creating wide territorial differences in building energy standards, which still have not been overcome under the existing regulatory framework. In response to the Recast of the EPDB directive, in 2011 the Ministry of Economic Development launched a revision of the 2009 Decree concerning the calculation of the energy performance of buildings. In addition, Italy is amending its previous legislation, which included some exemptions from energy certification that were deemed incompatible with the EU directive.<sup>128</sup></p> <p><b>Ireland</b> transposed the EPBD through the Energy Performance of Buildings Regulations 2006 (S.I. 666 of 2006), which provided for the Building Energy Rating (BER) system to be administered and enforced by the Sustainable Energy Authority of Ireland (SEAI).<sup>129</sup> While Ireland’s existing arrangements already address many of the requirements of Directive 2010/31/EU, some modifications and enhancements will be required. In this regard, a transposition plan is currently being prepared by the Department of the Environment, Heritage and Local Government.</p> <p><b>Lithuania</b> transposed the Directive 2010/31/EU through amendments to the Building Act, which were approved by Parliament in May 2012. At the moment the Ministry of Environment is preparing the necessary changes to technical regulations for measuring the energy efficiency of buildings. These changes are expected to be finished by the end of the year.</p>
Compliance with art. 6 (1) of Decision No. 406/2009/EC on the effort of Member States to meet their greenhouse gas emission reduction commitments up to 2020	<p><b>Italy:</b> ISPRA<sup>130</sup> prepares an annual national system document that includes all updated information on institutional, legal and procedural arrangements for estimating emissions and removals of greenhouse gases and for reporting and archiving inventory information.<sup>131</sup></p> <p><b>Ireland:</b> The EPA compiles Ireland's national greenhouse gas emission inventory on an annual basis. This inventory is submitted to the European Commission and UNFCCC each year by 15 March and 15 April, respectively.<sup>132</sup></p>

<sup>128</sup> Comitato Termotecnico Italiano Energia e Ambiente (2012), “Attuazione della certificazione energetica degli edifici in Italia - Report 2012”.

<sup>129</sup> Concerted Action Energy performance of building (2011b).

<sup>130</sup> Istituto Superiore per la Protezione e la Ricerca Ambientale (National Institute for the environmental protection and research).

<sup>131</sup> Istituto Superiore per la Protezione e la Ricerca Ambientale (2010).

<sup>132</sup> Environment Protection Agency (2012).

EU Directive	Key actions
	<p><b>Lithuania:</b> All measures mentioned under art. 6 (1), including gathering information on greenhouse gas emissions, are implemented by the Ministry of Environment and the Lithuanian Environmental Investment Fund. The Lithuanian Environmental Investment Fund prepares an annual report on greenhouse gas emissions.</p>
<p>Directive 2006/32/EC on energy end-use efficiency and energy services</p>	<p><b>Italy</b> submitted its second EEAP in July 2011.</p> <p><b>Ireland</b> submitted a second National Energy Efficiency Action Plan in 2012.</p> <p><b>Lithuania</b> transposed the Directive through amendments to Energy Act, Building Act and Heating Act.</p>
<p>Directive 2004/8/EC on the promotion of cogeneration based on a useful demand in the international energy market and amending Directive 92/42/EEC</p>	<p><b>Italy:</b> The implementation of the Combined Heat and Power Directive is carried out at a national level for the purpose of improving overall energy efficiency, security of supply and a reduction in emissions. The impact of the CHP Directive is expected to be positive on generation, distribution and the organisation of District Heating (DH) Systems<sup>133</sup>, and it is closely linked to the full application of the support scheme for energy efficiency titles (White certificates) in DH.<sup>134</sup> In highlighting the role of CHP in the overall context of energy efficiency, Directive 2004/8/EC, transposed into national law by Legislative Decree 20/2007, introduces the concept of high-efficiency cogeneration (CAR) tied to an energy index: the Primary Energy Saving. In deciding the rules for technical provisions in the above mentioned acts, Ministerial decree 5/9/2011 is responsible for defining the economic benefits to support plants that achieve the status of CAR.<sup>135</sup> In order to make it easier to understand the scope of the Directive, guidelines drafted by the Italian Ministry of the economic development aim to provide information and to give some ground rules describing the possible cases that may occur, while taking for granted the impossibility of covering all of individual cases.<sup>136</sup></p> <p><b>Ireland:</b> The Energy (Miscellaneous Provisions) Act of 2006 is the transposition of the EU CHP Directive into Irish law. However, the DH market in Ireland is only in its infancy. There is a relatively low number of small-scale systems operating or under development. The majority of these DH systems only serve a single development.</p>

<sup>133</sup> District heating (less commonly called teleheating) is a system for distributing heat generated in a centralised location for residential and commercial heating requirements such as space heating and water heating.

<sup>134</sup> EcoHeat4eu (2011).

<sup>135</sup> In accordance with art. 30 paragraph 11 of the Act 23 July 2009 (Legge 23 luglio 2009, n. 99 "Disposizioni per lo sviluppo e l'internazionalizzazione delle imprese, nonché in materia di energia"), and art. 29 paragraph 4 of Legislative Decree of 3 March 2011 (Attuazione della direttiva 2009/28/CE sulla promozione dell'uso dell'energia da fonti rinnovabili, recante modifica e successiva abrogazione delle direttive 2001/77/CE e 2003/30/CE).

<sup>136</sup> The Italian Ministry for the Economic Development (2012)..

EU Directive	Key actions
	<b>Lithuania</b> transposed the Directive through amendments to the Electric Energy Act.
Directive 2009/28/EC on the promotion of the use of energy from renewable resources	<p><b>Italy:</b> Directive 2009/28/CE was transposed into national law by Decree No. 28/2011 which covers all articles of the Directive in order to promote renewable energy sources and remove existing obstacles. Italy is indeed on track as regards the implementation of the Directive and will slightly overshoot its indicative target<sup>137</sup>.</p> <p><b>Ireland:</b> Statutory Instrument 147 of 2011 was introduced to transpose certain provisions of the Directive regarding the access to and operation of the grid, guarantees of origin and the exemplary role of public bodies regarding public buildings. Statutory Instrument 148 of 2011 assigned additional functions to the Sustainable Energy Authority of Ireland including the provision of renewable energy related information and training; the promotion and encouragement of renewable energy use by public bodies and the promotion of certain renewable technologies.</p> <p>The Biofuel Obligation and Miscellaneous Provisions Act 2010 (No. 11 of 2010) provided for the increased supply of biofuel in Ireland by means of a biofuel obligation requiring that a specified amount of road transport fuel be biofuel. Several related statutory instruments<sup>138</sup> were introduced pertaining to the biofuel obligation. Certain requirements of the Directive are already provided for in existing legislation.<sup>139</sup></p> <p><b>Lithuania:</b> transposed the Directive through amendments to the Energy Act.</p>

Source: Authors.

<sup>137</sup> For instance according to the NREAP Italy planned an installed capacity up to 8 GW by 2020. At the time being the installed capacity is up to 12.5 GW which is due to the reduction of photovoltaic (PV) technology costs and to the review of PV support scheme. The Decree no. 28/2011 has deeply revised the overall RES – E support scheme nevertheless the implementing ministerial decree has not been adopted yet. In order to protect existing investments the new system will apply to plants commissioned after 1 January 2013.

<sup>138</sup> These include Statutory Instrument 33 of 2012 entitled as European Union (Biofuel Sustainability Criteria) Regulations 2012, published in “Iris Oifigiúil” of 7<sup>th</sup> February, 2012.

<sup>139</sup> These includes Statutory Instrument No. 599/2010 entitled as Electricity Regulation Act 1999 and Gas (Interim) (Regulation) Act 2002 (Gas) Levy Order 2010 published in the “Iris Oifigiúil” of 17<sup>th</sup> December, 2010. Statutory Instrument 666 of 2006 entitled as European Communities (Energy Performance of Buildings [EPBD]) Regulations 2006 published by the stationery office Dublin and the Building Control (Part L Amendment) Regulations 2007.





## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **B** STRUCTURAL AND COHESION POLICIES

## Role

The Policy Departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

## Policy Areas

- Agriculture and Rural Development
- Culture and Education
- Fisheries
- Regional Development
- Transport and Tourism

## Documents

Visit the European Parliament website:  
<http://www.europarl.europa.eu/studies>

PHOTO CREDIT: iStock International Inc., Photodisk, Phovoir



ISBN 978-92-823-4080-6  
doi: 10.2861/29902