



EUROPEAN COMMISSION

Directorate-General
Regional and Urban Policy

2014-2020 Policy and Legislation Inter-institutional relations

DRAFT

Guidance on *Ex Ante* Conditionalities

PART II

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

15 March 2013

DRAFT

Table of Contents

A. THEMATIC <i>EX ANTE</i> CONDITIONALITIES	5
A.1-1 Research and innovation	5
A.1-2 Research and innovation infrastructure.....	15
A. 2-1 Digital growth	19
A. 2-2 Next Generation Access.....	25
A.3 SMEs	33
A. 4-1 Energy efficiency in infrastructure, public buildings, housing sector	41
A. 4-2 Cogeneration	57
A. 4-3 Renewable energy	65
A. 5 Risk prevention and management	73
A. 6-1 Water.....	85
A. 6-2 Waste	97
A.7-1 Road	115
A.7-2 Railway	131
A.8-1 Access to employment	139
A.8-2 Self-employment.....	139
A. 8-3 Labour market institutions	139
A.8-4 Active and healthy ageing.....	139
A.8-5 Adaptation of workers, enterprises / entrepreneurs to change.....	139
A. 9-1 Early school leaving.....	139
A.9-2 Higher education	139
A.9-3 Lifelong learning.....	139
A.10-1 Active inclusion	139
A.10-2 Roma inclusion	140
A.10-3 Health.....	140
A.11 Member States administrative efficiency	140
B. GENERAL <i>EX ANTE</i> CONDITIONALITIES.....	140
B.1 Anti-discrimination.....	140
B.2 Gender equality.....	140
B.3 Disability	140
B. 4. Public procurement.....	141
B. 5. State aid	153
B. 6. Environmental legislation.....	161

DRAFT

A. THEMATIC EX ANTE CONDITIONALITIES

A.1-1 Research and innovation¹

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

1. When to assess applicability?

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

2. Definitions

A Strategic Policy Framework is based on evidence and on longer-term objectives which are agreed and implemented in cooperation with relevant stakeholders (government, education providers, labour market stakeholders, social partners, etc.). It can be established in a single policy document or in a set of inter-linked policy documents. However, a strategy is more than a collection of measures or an accumulation of disconnected individual projects. In case measures are contained in different policy documents, they need to be embedded in a

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

politically endorsed strategic approach towards the strategy's objective of economic transformation towards higher knowledge-intensity and added value. A strategy sets out the scope, timeframe, concrete objectives, allocation of resources, a comprehensive set of measures to achieve these and monitoring and evaluation instruments to assess progress of implementation.

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

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

See the following documents:

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

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

- Fact-sheet on smart specialisation

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

Entrepreneurial discovery process means that the strategy was developed has to go through an active stakeholder involvement process that brought together entrepreneurs and researchers, and as relevant civil society, public sector bodies involved in innovation etc. This helps to avoid the short-comings of purely political interest-driven or consultant-written strategies,

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

because this process allows to draw operational conclusions out of the results of the SWOT / statistical type of analysis to shape ownership around the strategies and to design the intervention methods according to the needs of innovation actors, in particular of course the enterprises. (RI3S guide, step 1)

3. Source of information for assessment

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

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

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

⁵ see: RI3 guide step 1

⁶ see: RI3 guide step 4

⁷ see RI3 guide step 5

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

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

⁹ see: RIS guide step 6

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

2. Extracts of relevant documents

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

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

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

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

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

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

- An effective and stable centre-of-government structure, typically steered by the top political level, defines broad policy orientations on a multi-annual basis and ensures sustained and properly coordinated implementation. This structure is backed up by networks involving all relevant stakeholders, such as industry, regional and local authorities, parliaments and citizens, thereby stimulating an innovation culture and building mutual trust between science and society.
- A multi-annual strategy defines a limited number of priorities, preceded by an international analysis of strengths and weaknesses at national and regional level and of emerging opportunities ('smart specialisation') and market developments, and provides a predictable policy and budgetary framework. The strategy duly reflects EU priorities, avoiding unnecessary duplication and fragmentation of efforts, and actively seeks to exploit opportunities for joint programming, cross-border co-operation and exploiting the leverage effects of EU instruments. Bilateral co-operation with non-EU countries is based on a clear strategy and, where possible, is co-ordinated with the other EU Member States.
- An effective monitoring and review system is in place, which makes full use of output indicators, international benchmarking and ex-post evaluation tools.

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

- A broad concept of innovation - including innovation in services, improvements of processes and organisational change, business models, marketing, branding and design - is actively promoted, *inter alia* through more interdisciplinary work involving groups of users or consumers as important constituencies of open innovation.
- Supply and demand-side policies are developed in a consistent manner, building on and increasing the absorptive capacity of the Single Market.

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

- It is recognised that public funding assumes an important role in providing a high quality knowledge infrastructure and as an incentive for maintaining excellence in education and research including access to world-class research infrastructures, building regional S&T capacity and supporting innovation activity especially during periods of economic recessions. As a consequence, public investments in education, research and innovation are prioritised and budgeted in the framework of multi-annual plans to ensure predictability and long term impact, and drawing on the Structural Funds where appropriate.
- Public funding aims at leveraging greater private sector investments. Innovative financing solutions (e.g. public-private partnerships) and the use of tax incentives are explored and adopted. Reforms are implemented to reflect changing conditions and ensure optimal returns on investments.

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

- Research funding is increasingly allocated on a competitive basis and the balance between institutional and project-based funding of research has a clear rationale. Institutes are evaluated on the basis of internationally recognized criteria and projects are selected on the basis of the quality of proposals and expected results, subject to external peer review. Funding to researchers is portable across borders and institutes. Results of publicly funded research are protected and published in a way that encourages their exploitation.
- Higher education and research institutes enjoy the necessary autonomy to organise their activities in the areas of education, research, and innovation, apply open recruitment methods and to draw on alternative sources of funding such as philanthropy.
- The legal, financial and social frameworks for research careers, including doctoral studies, offer sufficiently attractive conditions to both men and women in comparison to international standards, especially those in the US. This includes favourable conditions for reconciling private and professional life and for professional development and training. There are incentives in place to attract leading international talent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The public sector itself is a driver of innovation

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

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

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

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

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

I. KEY MESSAGES

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

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

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

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

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

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

3. Maximising the impact and efficiency of resources

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

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

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

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

4. Improving governance and monitoring progress

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

(.....)

III. ROADMAP FOR ACTIONS

THE COUNCIL OF THE EUROPEAN UNION

(.....)

2. INVITES Member States:

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

3. Further reading

- State aid framework for R&D and innovation

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

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

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

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

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

A.1-2 Research and innovation infrastructure¹⁰

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

1. When to assess applicability?

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

2. Definitions

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

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

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

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

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

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

3. Source of information for assessment

ESFRI Website

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

- ESFRI Roadmap:

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

2. Extracts of relevant documents

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

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

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

3. Further reading

DRAFT

A. 2-1 Digital growth¹³

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
Enhancing access to and use and quality of information and communication technologies (<i>Broadband target</i>) (referred to in Article 9(2))	ERDF: - developing ICT products and services, e-commerce and enhancing demand for ICT - strengthening ICT applications for e-government, e-learning, e-inclusion, e-culture and e-health	2.1 <i>Digital growth</i> : A strategic policy framework for digital growth to stimulate demand for affordable, good quality and interoperable ICT-enabled private and public services and increase uptake by citizens, including vulnerable groups, businesses and public administrations including cross border initiatives.	A strategic policy framework for digital growth, for instance, within the national or regional innovation strategic policy framework for smart specialisation is in place that contains: - budgeting and prioritisation of actions through a SWOT or similar analysis consistent with the Scoreboard of the Digital Agenda for Europe; - an analysis of balancing support for demand and supply of information and communication technologies (ICT) should have been conducted; - indicators to measure progress of interventions in areas such as digital literacy, e-inclusion, e-accessibility, and of e-health within the limits of Article 168 TFEU which are aligned with existing relevant sectoral national or regional strategies; - assessment of needs to reinforce ICT capacity-building.

1. When to assess applicability?

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

2. Definitions

A Strategic Policy Framework for Digital Growth charts the obstacles and actions needed to overcome them in order to maximise the social and economic potential of ICT, most notably the internet. The strategy is based on evidence and sets objectives that make possible to chart them against the Digital Agenda for Europe. It contains measures ensuring that attractive content and services are made available in an interoperable internet environment to stimulate

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

demand for higher speeds and capacity as well as measures supporting the deployment and take-up of faster networks that can deliver this content and services.

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

3. Source of information for assessment

- Digital Agenda Scoreboard 2012

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

- by country:

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

- List of Digital Agenda Scoreboard Indicators:

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

2. Extract of relevant documents

3. Further reading

- Digital Agenda Europe

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

DRAFT

A. 2-2 Next Generation Access¹⁴

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

1. When to assess applicability?

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

2. Definitions

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

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

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

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

3. Source of information for assessment

- Digital Agenda Scoreboard

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

- *General:*

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

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

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

- *by country:*

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

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

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

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

- Guide to Broadband investments (September 2011)

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

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

To achieve the objective of access to Internet speeds of above 30 Mbps it is estimated that up to EUR 60 billion of investment would be necessary and up to EUR 270 billion for at least 50

% of households to take up Internet connections above 100 Mbps. Such investments shall primarily come from commercial investors.

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

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

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

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Extract of relevant documents

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

Article 6

Spectrum needs for wireless broadband communications

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

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

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

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

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

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

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

3. Further reading

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

A.3 SMEs¹⁶

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

1. When to assess applicability?

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

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

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

¹⁸ OJ L 48, 23.2.2011, p. 1.

2. Definitions

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

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

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

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

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

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

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

3. Source of information for assessment

- SBA fact-sheets:

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

- Late payment Directive:

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

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

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

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

4. Rationale for the *ex ante* conditionality

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

DRAFT

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

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

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

2. Extracts of relevant documents

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

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

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

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

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

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

Article 1

Subject matter and scope

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

Article 8

Transparency and awareness raising

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

[...]

Article 10

Recovery procedures for unchallenged claims

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

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

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

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

(a) periods for service of documents;

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

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

[...]

Article 12

Transposition

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

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

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

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

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

3. Further reading

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

DRAFT

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

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

1. When to assess applicability?

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

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

Public infrastructures means infrastructures which are:

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

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

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

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

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

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

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

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

3. Source of information for assessment

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

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

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

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

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

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

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

NIF Database (including all notifications required by the Directive)

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴ Recital 30 of Directive 2012/27/EU

2. Extract of relevant documents

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

Article 3

Adoption of a methodology for calculating the energy performance of buildings

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

This methodology shall be adopted at national or regional level.

Article 4

Setting of minimum energy performance requirements

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

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

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

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

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

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

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

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

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

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

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

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

Article 5

Calculation of cost-optimal levels of minimum energy performance requirements

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

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

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

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

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

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

[...]

Article 11

Energy performance certificates

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

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

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

The recommendations included in the energy performance certificate shall cover:

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

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

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

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

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

6. Certification for building units may be based:

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

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

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

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

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

[...]

ANNEX I

Common general framework for the calculation of energy performance of buildings

(referred to in Article 3)

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

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

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

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

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

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

ANNEX III

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

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

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

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

The Commission shall also provide:

— guidelines to accompany the comparative methodology framework; these guidelines will serve to enable the Member States to undertake the steps listed below,

— information on estimated long-term energy price developments.

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

The comparative methodology framework shall require Member States to:

— define reference buildings that are characterised by and representative of their functionality and geographic location, including indoor and outdoor climate conditions. The reference buildings shall cover residential and non-residential buildings, both new and existing ones,

— define energy efficiency measures to be assessed for the reference buildings. These may be measures for individual buildings as a whole, for individual building elements, or for a combination of building elements,

— assess the final and primary energy need of the reference buildings and the reference buildings with the defined energy efficiency measures applied,

— calculate the costs (i.e. the net present value) of the energy efficiency measures (as referred to in the second indent) during the expected economic lifecycle applied to the reference buildings (as referred to in the first indent) by applying the comparative methodology framework principles.

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

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

CHAPTER III

PROMOTION OF ENERGY END-USE EFFICIENCY AND ENERGY SERVICES

Article 13

Metering and informative billing of energy consumption

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

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

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

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

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

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

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

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

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

CHAPTER I

SUBJECT MATTER, SCOPE, DEFINITIONS AND ENERGY EFFICIENCY TARGETS

Article 3

Energy efficiency targets

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

[...]

CHAPTER II

EFFICIENCY IN ENERGY USE

Article 4

Building renovation

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

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

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

Article 5

Exemplary role of public bodies' buildings

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

[...]

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

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

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

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

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

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

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

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

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

[...]

CHAPTER V

FINAL PROVISIONS

[...]

Article 24

Review and monitoring of implementation

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

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

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

[...]

Article 27

Amendments and repeals

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

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

[...]

Article 28

Transposition

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

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

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

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

3. Further reading

- DG ENER: National Energy Efficiency Action Plans
http://ec.europa.eu/energy/efficiency/end-use_en.htm
- DG ENER: New Energy Efficiency Directive
http://ec.europa.eu/energy/efficiency/eed/eed_en.htm
- DG ENER: Energy Performance of Buildings Directive
http://ec.europa.eu/energy/efficiency/buildings/buildings_en.htm
- DG ENER: Financing energy efficiency:
http://ec.europa.eu/energy/efficiency/financing/financing_en.htm
- DG ENER: Energy Performance Contracting
http://ec.europa.eu/energy/efficiency/financing/campaign_en.htm
- DG ENER: The European Strategic Energy Technology Plan:
http://ec.europa.eu/energy/technology/set_plan/set_plan_en.htm
- DG CNECT: ICT for Energy Efficiency – Local and Regional Initiatives (“Wiki”):
http://ec.europa.eu/information_society/activities/sustainable_growth/ict4ee_wiki/index_en.htm

DRAFT

A. 4-2 Cogeneration²⁵

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

1. When to assess applicability?

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

2. Definitions

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

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

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

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

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

3. Source of information for assessment

- National reports

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

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

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

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

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

- link to reports of 2011 in original language:

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

- link to the report of 2011 translated into English

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

- Progress report by the Commission

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

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

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

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

- Progress Report on energy efficiency in the EU

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

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

2. Extracts of relevant documents

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

Article 6

National potentials for high-efficiency cogeneration

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

2. The analysis shall:

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

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

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

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

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

Article 7

Support schemes

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

[...]

Article 9

Administrative procedures

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

Such evaluation shall be made with a view to:

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

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

[...]

ANNEX IV

Criteria for analysis of national potentials for high-efficiency cogeneration

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

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

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

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

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

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

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

3. Further reading

DRAFT

A. 4-3 Renewable energy²⁶

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

1. When to assess applicability?

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

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

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

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

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

3. Source of information for assessment

- National reports

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

- *link to progress reports in the original language*

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

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

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

- National renewable energy action plans

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

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

- Progress report by the Commission

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

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

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

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

Annex: BACKGROUND INFORMATION

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

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

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

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

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

2. Extract of relevant documents

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

Article 4

National renewable energy action plans

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

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

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

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

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

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

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

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

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

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

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

[...]

Article 14

Information and training

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

[...]

Article 16

Access to and operation of the grids

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

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

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

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

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

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

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

ANNEX

TABLE OF CONTENTS

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

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

5. Assessments.

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

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

5.3. Assessment of the impacts (Optional)

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

3. Further reading

For further information on renewable energy:

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

A. 5 Risk prevention and management²⁷

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
5. Promoting climate change adaptation and risk prevention (referred to in Article 9(5))	ERDF+ CF: Promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems	<i>5.1 Risk prevention and risk management:</i> The existence of national or regional risk assessments for disaster management taking into account climate change adaptation	A national or regional risk assessment with the following elements shall be in place: – A description of the process, methodology, methods and non-sensitive data used for risk assessment as well as of the risk-based criteria for the prioritisation of investment; – A description of single-risk and multi-risk scenarios; – Taking into account, where appropriate, national climate change adaptation strategies.

1. When to assess applicability?

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

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

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

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

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

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

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

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

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

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

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

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

A common approach is to divide risks into three bands:

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

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

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

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

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

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

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

3. Source of information for assessment

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

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

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

4. Rationale for the *ex ante* conditionality

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

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

DRAFT

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

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

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

infrastructures and constructions.

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

DRAFT

Annex: BACKGROUND INFORMATION

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

a) Main sources of commitments

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

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

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

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

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

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

b) Additional useful sources of information

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

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

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

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

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

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

2. Extract of relevant documents

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

The Council adopted the following conclusions:

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

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

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

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

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

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

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

²⁹ 15394/09.

³⁰ 5731/10.

³¹ 16797/10

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

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

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

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

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

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

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

10. Invites the Commission to:

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

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

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

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

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

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

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

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

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

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

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

11. Invites the Member States to:

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

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

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

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

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

³⁹ 17833/10, SEC(2010) 1626.

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

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

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

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

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

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

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

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

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

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

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

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

Presidency compromise (7 November 2012)

(based on 11799/4/12 REV 4)

Article 4

Definitions

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

[...]

3. "preparedness" means a state of readiness and capability of human and material means, structures, communities and organisations enabling them to ensure an effective rapid response to a disaster obtained as a result of action taken in advance
4. "prevention" means any action aimed at reducing risks or mitigating adverse consequences of disasters to people, the environment, property, including cultural heritage
5. "early warning" means the timely and effective provision of information that allows action to be taken to avoid or reduce risks and adverse impacts of a disaster and to facilitate preparedness for an effective response;
6. "module" means a self-sufficient and autonomous predefined task- and needs-driven arrangement of Member States' capabilities or a mobile operational team of the Member States, representing a combination of human and material means that can be described in terms of its capacity for intervention or by the task(s) it is able to undertake

[...]

8. "risk assessment" means the overall cross-sectoral process of risk identification, risk analysis, and risk evaluation undertaken at national or appropriate sub-national level.
9. "risk management capability" means the ability of a Member State or its regions to reduce, adapt to and/or mitigate risks (impacts and likelihood) identified in its risk assessments to levels acceptable in that Member State. Risk management capability can be assessed in terms of the capacity (technical, financial, administrative) to carry out adequate (1) risk assessments (2) risk management planning (for prevention and preparedness), and (3) risk prevention and preparedness measures.
10. "host nation support" means any action undertaken in the preparedness and response phases by a country receiving or sending assistance, or the Commission, and transit countries to remove foreseeable obstacles to the delivery and use of international assistance offered through the Union Mechanism, including support from Member States to facilitate the transiting of this assistance through their territory;

[...]

CHAPTER II

Prevention

Article 5

Prevention actions

1. ____ To fulfil the prevention objectives and actions, the Commission shall:

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

(g) highlight the importance of risk prevention and support Member States in awareness-raising, public information, and education;

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

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

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

Article 6

Risk management

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

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

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

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

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

3. Further reading

ISO 31010 - Risk management — Risk assessment techniques

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

A. 6-1 Water⁴¹

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

1. When to assess applicability?

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

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

2. Definitions (Water Framework Directive)

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

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

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

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

Recovery of costs for water services:

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

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

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

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

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

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

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

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

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

They should be registered according to the Directive.

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

3. Source of information for assessment

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

4. Rationale for the *ex ante* conditionality

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

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

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

<p>implemented.</p> <ul style="list-style-type: none"> ○ A list of environmental objectives established under Article 4 for surface waters, groundwater and protected areas, including in particular identification of instances where use has been made of Article 4(4), (5), (6) and (7) (see in Annex to this fiche), and the associated information required under that article. If this is not done, it is not possible to see how a proposed project will fit into the picture. ○ A report on the practical steps and measures taken to apply the principle of recovery of the costs of water use in accordance with Article 9. ○ A summary of the measures taken under Article 11(5) for bodies of water which are unlikely to achieve the objectives set out under Article 4. Indeed, if a project concerns an area in which the objectives for the water bodies are unlikely to be achieved, it is necessary to see how such project fits in the MS plans to address the problem. 		
---	--	--

Annex: BACKGROUND INFORMATION

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

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

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

2. Extract of relevant documents

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

Article 4

Environmental objectives

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

(a) for surface waters

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

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

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

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

(b) for groundwater

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

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

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

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

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

(c) for protected areas

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

[...]

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

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

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

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

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

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

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

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

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

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

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

(b) Member States ensure,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[...]

Article 8

Monitoring of surface water status, groundwater status and protected areas

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

- for surface waters such programmes shall cover:

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

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

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

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

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

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

Article 9

Recovery of costs for water services

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

Member States shall ensure by 2010

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

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

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

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

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

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

[...]

Article 13

River basin management plans

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

[...]

ANNEX III

ECONOMIC ANALYSIS

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

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

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

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

[...]

ANNEX VII

RIVER BASIN MANAGEMENT PLANS

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

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

This shall include:

1.1. for surface waters:

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

1.2. for groundwaters:

- mapping of the location and boundaries of groundwater bodies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Further reading

a) DG Environment resources

- General 'water' webpage:

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

b) European Court of Auditor's:

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

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

A. 6-2 Waste ⁴²

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

1. When to assess applicability?

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

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

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

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

⁴² This table is based on the Council Compromise text.

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

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

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

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

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

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

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

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

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

3. Source of information for assessment

- Waste management plans (2nd criterion)

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

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

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

- Waste prevention programmes (3rd criterion)

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

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

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

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

- Use of Economic Instruments and Waste Management Performances

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

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

- Roadmaps on how to implement the waste legislation

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

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

- Country specific recommendations

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

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

4. Rationale for the *ex ante* conditionality

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

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

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

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

Annex: BACKGROUND INFORMATION

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

a) Main references

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

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

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

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

b) Other references

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

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

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

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

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

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

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

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

2. Extract of relevant documents

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

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

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

[...]

Article 4

Waste hierarchy

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

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

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

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

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

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

[...]

CHAPTER II

GENERAL REQUIREMENTS

Article 8

Extended producer responsibility

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

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

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

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

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

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

[...]

Article 10

Recovery

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

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

Article 11

Re-use and recycling

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

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

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

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

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

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

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

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

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

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

[...]

Article 13

Protection of human health and the environment

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

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

[...]

CHAPTER III

WASTE MANAGEMENT

Article 15

Responsibility for waste management

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

[...]

⁴³ OJ L 332, 9.12.2002, p. 1.

Article 16

Principles of self-sufficiency and proximity

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

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

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

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

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

[...]

CHAPTER V

PLANS AND PROGRAMMES

Article 28

Waste management plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 29

Waste prevention programmes

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

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

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

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

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

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

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

[...]

CHAPTER VII

FINAL PROVISIONS

Article 37

Reporting and reviewing

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

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

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

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

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

[...]

Article 39

Committee procedure

1. The Commission shall be assisted by a committee.

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

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

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

ANNEX IV

⁴⁴ OJ L 377, 31.12.1991, p. 48.

EXAMPLES OF WASTE PREVENTION MEASURES REFERRED TO IN ARTICLE 29

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

1. The use of planning measures, or other economic instruments promoting the efficient use of resources.
2. The promotion of research and development into the area of achieving cleaner and less wasteful products and technologies and the dissemination and use of the results of such research and development.
3. The development of effective and meaningful indicators of the environmental pressures associated with the generation of waste aimed at contributing to the prevention of waste generation at all levels, from product comparisons at Community level through action by local authorities to national measures.

Measures that can affect the design and production and distribution phase

4. The promotion of eco-design (the systematic integration of environmental aspects into product design with the aim to improve the environmental performance of the product throughout its whole life cycle).
5. The provision of information on waste prevention techniques with a view to facilitating the implementation of best available techniques by industry.
6. Organise training of competent authorities as regards the insertion of waste prevention requirements in permits under this Directive and Directive 96/61/EC.
7. The inclusion of measures to prevent waste production at installations not falling under Directive 96/61/EC. Where appropriate, such measures could include waste prevention assessments or plans.
8. The use of awareness campaigns or the provision of financial, decision making or other support to businesses. Such measures are likely to be particularly effective where they are aimed at, and adapted to, small and medium sized enterprises and work through established business networks.
9. The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging.
10. The promotion of credible environmental management systems, including EMAS and ISO 14001.

Measures that can affect the consumption and use phase

11. Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge.
12. The use of awareness campaigns and information provision directed at the general public or a specific set of consumers.
13. The promotion of credible eco-labels.
14. Agreements with industry, such as the use of product panels such as those being carried out within the framework of Integrated Product Policies or with retailers on the availability of waste prevention information and products with a lower environmental impact.
15. In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004.

16. The promotion of the reuse and/or repair of appropriate discarded products or of their components, notably through the use of educational, economic, logistic or other measures such as support to or establishment of accredited repair and reuse-centres and networks especially in densely populated regions.

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

Article 6

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representatives of the Commission.

The representative of the Commission shall submit to the committee a draft of measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission may defer applications of the measures which it has decided for a period of not more than one month from the date of such communication,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first indent.

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

Article 1

Objectives

1. This Directive aims to harmonize national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

[...]

Article 4

Prevention

1. Member States shall ensure that, in addition to the measures to prevent the formation of packaging waste taken in accordance with Article 9, other preventive measures are implemented. Such other measures may consist of national programmes or similar actions adopted, if appropriate in consultation with economic operators, and designed to collect and take advantage of the many initiatives taken within Member States as regards prevention. They shall comply with the objectives of this Directive as defined in Article 1 (1).

2. The Commission shall help to promote prevention by encouraging the development of suitable European standards, in accordance with Article 10.

Article 5

Member States may encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty.

[...]

Article 9

Essential requirements

1. Member States shall ensure that three years from the date of the entry into force of this Directive, packaging may be placed on the market only if it complies with all essential requirements defined by this Directive including Annex II.

2. Member States shall, from the date set out in Article 22 (1), presume compliance with all essential requirements set out in this Directive including Annex II in the case of packaging which complies:

(a) with the relevant harmonized standards, the reference numbers of which have been published in the Official Journal of the European Communities. Member States shall publish the reference numbers of national standards transposing these harmonized standards;

(b) with the relevant national standards referred to in paragraph 3 in so far as, in the areas covered by such standards, no harmonized standards exist.

3. Member States shall communicate to the Commission the text of their national standards, as referred to in paragraph 2 (b), which they deem to comply with the requirements referred to in this Article. The Commission shall forward such texts forthwith to the other Member States.

Member States shall publish the references of these standards. The Commission shall ensure that they are published in the Official Journal of the European Communities.

4. Where a Member State or the Commission considers that the standards referred to in paragraph 2 do not entirely meet the essential requirements referred to in paragraph 1, the Commission or the Member State concerned shall bring the matter before the Committee set up by Directive 83/189/EEC giving the reasons therefor. This Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform Member States whether or not it is necessary to withdraw those standards from the publications referred to in paragraphs 2 and 3.

Article 10

Standardization

The Commission shall promote, as appropriate, the preparation of European standards relating to the essential requirements referred to in Annex II.

The Commission shall promote, in particular, the preparation of European standards relating to:

- criteria and methodologies for life-cycle analysis of packaging,
- the methods for measuring and verifying the presence of heavy metals and other dangerous substances in the packaging and their release into the environment from packaging and packaging waste,
- criteria for a minimum content of recycled material in packaging for appropriate types of packaging,

- criteria for recycling methods,
- criteria for composting methods and produced compost,
- criteria for the marking of packaging.

[...]

Article 14

Management Plans

In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 17 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste, including measures taken pursuant to Articles 4 and 5.

[...]

Article 22

Implementation in national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.

ANNEX II

ESSENTIAL REQUIREMENTS ON THE COMPOSITION AND THE REUSABLE AND RECOVERABLE, INCLUDING RECYCLABLE, NATURE OF PACKAGING

1. Requirements specific to the manufacturing and composition of packaging - Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer.

- Packaging shall be designed, produced and commercialized in such a way as to permit its reuse or recovery, including recycling, and to minimize its impact on the environment when packaging waste or residues from packaging waste management operations are disposed of.

- Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimized with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.

2. Requirements specific to the reusable nature of packaging The following requirements must be simultaneously satisfied:

- the physical properties and characteristics of the packaging shall enable a number of trips or rotations in normally predictable conditions of use,

- possibility of processing the used packaging in order to meet health and safety requirements for the workforce,

- fulfil the requirements specific to recoverable packaging when the packaging is no longer reused and thus becomes waste.

3. Requirements specific to the recoverable nature of packaging (a) Packaging recoverable in the form of material recycling Packaging must be manufactured in such a way as to enable the recycling of a certain percentage by weight of the materials used into the manufacture of marketable products, in compliance with current standards in the Community. The establishment of this percentage may vary, depending on the type of material of which the packaging is composed.

(b) Packaging recoverable in the form of energy recovery Packaging waste processed for the purpose of energy recovery shall have a minimum inferior calorific value to allow optimization of energy recovery.

(c) Packaging recoverable in the form of composting Packaging waste processed for the purpose of composting shall be of such a biodegradable nature that it should not hinder the separate collection and the composting process or activity into which it is introduced.

(d) Biodegradable packaging Biodegradable packaging waste shall be of such a nature that it is capable of undergoing physical, chemical, thermal or biological decomposition such that most of the finished compost ultimately decomposes into carbon dioxide, biomass and water.

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

Article 5

Waste and treatment not acceptable in landfills

1. Member States shall set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills, not later than two years after the date laid down in Article 18(1) and notify the Commission of this strategy. This strategy should include measures to achieve the targets set out in paragraph 2 by means of in particular, recycling, composting, biogas production or materials/energy recovery. Within 30 months of the date laid down in Article 18(1) the Commission shall provide the European Parliament and the Council with a report drawing together the national strategies.

2. This strategy shall ensure that:

(a) not later than five years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 75 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available

(b) not later than eight years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 50 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available;

(c) not later than 15 years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 35 % of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data is available.

Two years before the date referred to in paragraph (c) the Council shall reexamine the above target, on the basis of a report from the Commission on the practical experience gained by Member States in the pursuance of the targets laid down in paragraphs (a) and (b) accompanied, if appropriate, by a proposal with a view to confirming or amending this target in order to ensure a high level of environmental protection.

Member States which in 1995 or the latest year before 1995 for which standardised EUROSTAT data is available put more than 80 % of their collected municipal waste to landfill may postpone the attainment of the targets set out in paragraphs (a), (b), or (c) by a period not exceeding four years. Member States intending to make use of this provision shall inform in advance the Commission of their decision. The Commission shall inform other Member States and the European Parliament of these decisions.

The implementation of the provisions set out in the preceding subparagraph may in no circumstances lead to the attainment of the target set out in paragraph (c) at a date later than four years after the date set out in paragraph (c).

3. Member States shall take measures in order that the following wastes are not accepted in a landfill:

(a) liquid waste;

(b) waste which, in the conditions of landfill, is explosive, corrosive, oxidising, highly flammable or flammable, as defined in Annex III to Directive 91/689/EEC;

(c) hospital and other clinical wastes arising from medical or veterinary establishments, which are infectious as defined (property H9 in Annex III) by Directive 91/689/EEC and waste falling within category 14 (Annex I.A) of that Directive.

(d) whole used tyres from two years from the date laid down in Article 18(1), excluding tyres used as engineering material, and shredded used tyres five years from the date laid down in Article 18(1) (excluding in both instances bicycle tyres and tyres with an outside diameter above 1 400 mm);

(e) any other type of waste which does not fulfil the acceptance criteria determined in accordance with Annex II.

4. The dilution of mixture of waste solely in order to meet the waste acceptance criteria is prohibited.

3. Further reading

a) DG Environment resources

- General 'waste' webpage:
<http://ec.europa.eu/environment/waste/index.htm>
- Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste:
http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf
- Scoreboard by MS on waste management performance:
http://europa.eu/rapid/press-release_IP-12-888_en.htm

b) European Court of Auditor's:

- Special Report Special Report No 20/2012 – Is structural measures funding for municipal waste management infrastructure projects effective in helping member states achieve EU waste policy objectives?
<http://eca.europa.eu/portal/pls/portal/docs/1/20156748.PDF>

A.7-1 Road ⁴⁵

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7))	<p>ERDF + CF:</p> <ul style="list-style-type: none"> – supporting a multimodal Single European Transport Area by investing in the Trans-European Transport Network (TEN-T) network <p>ERDF:</p> <ul style="list-style-type: none"> – enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure 	<p>7.1. <i>Road</i>: The existence of a comprehensive plan(s) or framework(s) for transport investment in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks.</p>	<ul style="list-style-type: none"> – The existence of a comprehensive transport plan(s) or framework(s) for transport investment which fulfills legal requirements for strategic environmental assessment and sets out: <ul style="list-style-type: none"> – the contribution to the single European Transport Area consistent with Article 10 of Regulation No. [TEN-T], including priorities for investments in: <ul style="list-style-type: none"> – the core TEN-T network and the comprehensive network where investment from the ERDF and CF is envisaged; and – secondary connectivity. – a realistic and mature pipeline for projects envisaged for support from the ERDF and CF. – Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding:

- within ERDF/CF to support for multimodal Single European Transport Area by investing in the TEN-T network (Art. 5 (7) (a) of the ERDF Regulation and Art.3 (d) (i) of the CF Regulation), and/or
- within ERDF for enhancing regional mobility though connecting secondary and tertiary nodes to TEN-T infrastructure (Art. 5 (7) (b) of the ERDF Regulation).

⁴⁵ The table below is based on the Council compromise text.

2. Definitions⁴⁶

Transport mode means railway, inland waterways, road, maritime or/and air transport.

Multimodal transport means the carriage of freight and /or passengers using two or more modes of transports

The comprehensive network constitutes the basic layer of the TEN-T. It consists of all existing and planned infrastructure meeting the requirements of the Guidelines. The comprehensive network is to be in place by 31 December 2050 at the latest.

The core network consists of those parts of the comprehensive TEN-T network which are of the highest strategic importance for the achievement of the objectives concerning the development of the trans-European network. It constitutes the backbone of the multi-modal mobility network. It concentrates on those components of TEN-T with the highest European added value: cross-border missing links, key bottlenecks and multi-modal nodes. It is the outcome of a two-step methodology identifying first main nodes within the EU and then connecting these nodes by multimodal links (road, rail, inland waterway) according to availability or feasibility, taking into account effectiveness and efficiency and preferably using existing infrastructure. The core network is to be in place by 31 December 2030 at the latest.

The core nodes consist of 82 urban main nodes (comprising all Member States' capitals, all "MEGA" cities according to ESPON and all other large urban areas or conurbations, including their entire relevant multimodal infrastructure as far as part of the comprehensive network), ports which exceed a certain volume threshold (at least 1 % of the total transshipment volume of all EU seaports) or provide the only access to a coastline of a NUTS 1 inland region and the 46 most relevant border crossing points. You will find in the annex below the list of nodes concerning each Member State.

The Intelligent Transport Systems (ITS) mean systems using information, communication, navigation and positioning/localization technologies in order to manage mobility and traffic on the trans-European transport network and to provide value added services to citizens and operators, including for safe, secure, environmentally sound and capacity efficient use of the network. They may also include on-board devices, provided they form an indivisible system with corresponding infrastructure components.

The concept of "realistic and mature project pipeline" has to be understood in the context of the whole project cycle starting from planning until the implementation. It means a list of projects for which:

- A feasibility study (including options analysis and preliminary design) has been concluded;
- There is a positive socio-economic Cost Benefit Analysis (including detailed estimated costs) demonstrating financial feasibility and the need for public financial contributions;

⁴⁶ Most of the definitions are based on the Commission's proposal for the TEN-T Regulation – adjustments might therefore intervene in the coming weeks to align them to the outcome of the trilogues on the TEN-T Regulation.

- EIA (environmental impact assessment) and other assessments (e.g. under Habitats and Water Framework Directives) are ideally finished or at least sufficiently advanced (i.e. consultations with the public and other authorities finished) and a development consent is expected without outstanding environmental issues
- State aid issues are cleared;
- There is a detailed implementation timetable, detailing procurement procedures (call for tenders can be expected to be completed in accordance to the timetable) and permission procedures (these should be ready to start: for instance land expropriations are well advanced and can be completed in sufficient time for the start of the works, as programmed).

3. Source of information for assessment

- Detailed maps of the comprehensive and the core network, including requirements for technical and traffic management standards, as defined in the TEN-T Guidelines:

http://ec.europa.eu/transport/themes/infrastructure/revision-t_en.htm

4. Rationale for the *ex ante* conditionality

The network effects of major transport investments in TENs networks is often missed due to missing links, often in border areas.

Investments in secondary transport infrastructure are often fragmented and fail to connect local business to EU markets, thereby undermining their integration in single market.

Lack of sufficient capacity of intermediate bodies and beneficiaries can substantially undermine the investment in road transport.

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

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>The existence of a comprehensive transport plan(s) or framework(s) for transport investment which:</i></p> <ul style="list-style-type: none"> ▪ The relevant operational programme contains a reference to the name of the framework and indicates where it or its different elements are published (in a form of a link) 		
<p>– <i>fulfills legal requirements for strategic environmental assessment :</i></p> <ul style="list-style-type: none"> ▪ An environmental report has been carried out identify, describe and evaluate the likely significant effects on the environment of the implementation of the plan or framework for transport investments and reasonable alternatives taking into account the objectives and the geographical scope of the plan or framework for transport investments. ▪ The draft plan or framework for transport investments and the environmental report has been made available to the public and the authorities designated by the Member States who are likely to be concerned by the environmental effects of the implementing plans. ▪ Where the implementation of the plan or framework for transport investments is likely to have significant effects on the environment in another Member State (transboundary effects), a copy of the draft plan or framework and the relevant environmental report has been forwarded to the other Member States. ▪ The environmental report and the opinions expressed in the relevant consultations have been taken into account before the adoption of the plan or framework for transport investments 		
<p>– <i>sets out the contribution to the single European Transport Area consistent with Article 10 of Regulation No. [TEN-T], including priorities for investments in the core TEN-T network and the comprehensive network where investment from the ERDF and CF is envisaged; and secondary connectivity.</i></p> <ul style="list-style-type: none"> ▪ The investment priorities included in the plan or framework for transport investments connects the identified main nodes (see the list in annex) and provides for connections with neighbouring 		

countries' transport infrastructure networks.

- The plan or framework for transport investments includes measures that are necessary for:
 - ensuring enhanced accessibility for all regions of the Union;
 - ensuring optimal integration of the transport modes ; the plan includes namely detailed reference to integration of the road infrastructure with the other transport network;
 - bridging missing links and removing bottlenecks, inter alia in cross-border sections;
 - promoting the efficient use of the infrastructure and, where necessary, increase the capacity;
 - removing administrative and technical barriers, in particular to the interoperability of the network and to competition;
 - improving or maintaining the quality of infrastructure in terms of safety, security, efficiency, climate and where appropriate disaster resilience, environmental performances, social conditions, accessibility for all users, quality of services and continuity of traffic flows;
 - promoting innovative technological development;
 - implementing and deploying TA;
 - ensuring fuel security by promoting the use of alternative and in particular low or zero carbon energy sources and propulsion systems; the plan includes an assessment of the overall impact on energy sector induced by the transport sector;
 - mitigating exposure of urban areas to negative effects of transiting rail and road transport.

<ul style="list-style-type: none"> – sets out a realistic and mature pipeline for projects envisaged for support from the ERDF and CF ▪ The plan or framework for transport investments includes a table containing : <ul style="list-style-type: none"> ○ a list of prioritised projects (studies, upgrading or works) that the Member State envisages launching over the period and asking for support from the ERDF and CF. ○ the name of the authorities and stakeholders involved in the lead of these projects, the foreseen expenditures and a financing plan, ○ a realistic timetable for delivery (including design phase, development consent, procurement and permission procedures, and potential state aide notification) and for implementation (per phase for bigger projects). 		
<p><i>Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.</i></p> <ul style="list-style-type: none"> ▪ The Member State has provided an adequate description of the measures already in place to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline: <ul style="list-style-type: none"> ○ These measures are based on the analysis of both the bottlenecks and of the weaknesses of intermediary bodies and beneficiaries to deliver timely the project pipeline (e.g. tendering difficulties, including tenders without competitors and irregularities; irregularities, shortcomings, delays in implementing environment requirements; lack of clear prioritisation or moving priorities; lack of mature project pipeline under development; financial unbalance along the project cycle, lack of funding or funding provisions for maintenance and operations; long time to market of projects; excessive red tape administrative burden, paperwork; failure in managing complex systems (such as ETCS-ERTMS); ○ They include training and appropriate internal procedures to monitor and identify potential delays and to ensure a smooth and effective procurement; ○ A early warning system is in place to identify and solve any difficulties rising from intermediary bodies and beneficiairies when delivering the project pipeline; ○ Adequate assistance schemes are in place to help beneficiaries during procedure and implementation to be able to replace projects quickly when implementation is blocked. 		

Annex: BACKGROUND INFORMATION

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

- **TEN-T Regulation: Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))**⁴⁷

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0650:REV1:EN:HTML>

Annex I: Maps of the comprehensive and the core network – Vol. 2/33: Inland waterways and ports, Railways (freight), ports and rail-road terminals

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part02.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part02.pdf)

Annex I: Maps of the comprehensive and the core network – Vol. 3/33: Railways (passengers) and airports, roads, ports, rail-road terminals and airports

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part03.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part03.pdf)

Annex II: List of nodes of the core network

http://ec.europa.eu/transport/themes/infrastructure/doc/final_annexii.pdf

- **Strategic Environmental Assessment (SEA) Directive:**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

An environmental assessment shall be carried out for all plans and programmes which are prepared for transport and which set the framework for future development consent of projects⁴⁸.

⁴⁷ This reference will be replaced in the coming weeks to reference reflecting the outcome of the trilogue on the TEN-T Regulation.

⁴⁸ Annex I of the Environmental Impact Assessment Directive 85/337/ECC provides the list of the concerned projects: 7. (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more; 7. (b) Construction of motorways and express roads; 7. (c) Construction of a new road of four or more lanes, or realignment and /or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10km or more in a continuous length; 8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes; 8 (b) Trading ports, piers for loading and

2. Extract of relevant documents

- Council compromise text on the Union guidelines for the development of the trans-European transport network

<p>CHAPTER II</p> <p>THE COMPREHENSIVE NETWORK</p> <p><i>Article 10</i></p> <p>General priorities</p> <p>When developing the comprehensive network, general priority shall be given to measures that are necessary for:</p> <p>(a) ensuring enhanced accessibility for all regions of the Union;</p> <p>(b) ensuring optimal integration of the transport modes;</p> <p>(c) bridging missing links and removing bottlenecks, inter alia in cross-border sections;</p> <p>(cc) promoting the efficient use of the infrastructure and, where necessary, increase the capacity;</p> <p>(d) removing administrative and technical barriers, in particular to the interoperability of the network and to competition;</p> <p>(e) improving or maintaining the quality of infrastructure in terms of safety, security, efficiency, climate and where appropriate disaster resilience, environmental performances, social conditions, accessibility for all users, quality of services and continuity of traffic flows;</p> <p>(f) promoting innovative technological development;</p> <p>(g) implementing and deploying TA;</p> <p>(h) ensuring fuel security by promoting the use of alternative and in particular low or zero carbon energy sources and propulsion systems;</p> <p>(i) mitigating exposure of urban areas to negative effects of transiting rail and road transport.</p>

- Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))⁴⁹

<p>ANNEX II</p> <p>LIST OF NODES OF THE CORE NETWORK</p>
--

unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes. Annex II completes it with a list of infrastructure projects: 10 (c) Construction of railways or intermodal transshipment facilities and of intermodals terminals; 10. (d) Construction of airfields; 10 (e) Construction of roads, harbours and port installations, including fishing harbours; 10 (f) inland-waterway construction, canalisation and flood-relief works.

⁴⁹ This list of nodes will be replaced in the coming weeks by an updated version reflecting the outcome of the trilogues on the TEN-T Regulation.

1a. Urban nodes:

AUSTRIA

Wien

BELGIUM

Bruxelles/ Brussel

Antwerpen

BULGARIA

Sofia

CYPRUS

Lefkosia

CZECH REPUBLIC

Praha

Ostrava

DENMARK

København

Aarhus

ESTONIA

Tallinn

FINLAND

Helsinki

Turku

FRANCE

Paris

Bordeaux

Lille

Lyon

Marseille

Nice

Toulouse

GERMANY

Berlin

Bielefeld

Bremen

Düsseldorf

Frankfurt a. M.

Hamburg

Hannover

Köln

Leipzig

Mannheim

München

Nürnberg

Stuttgart

GREECE

Athina

Thessaloniki

HUNGARY

Budapest

IRELAND

Dublin

Cork

ITALY

Roma

Bologna

Genova

Milano

Napoli

Torino

Venezia

Palermo

LATVIA

Rīga

LITHUANIA

Vilnius

LUXEMBOURG

Luxembourg

MALTA

Valletta

THE NETHERLANDS

Amsterdam

Rotterdam

POLAND

Warszawa

Gdańsk

Katowice

Kraków

Łódź

Poznań

Szczecin

Wrocław

PORTUGAL

Lisboa

Porto

ROMANIA

București

Timisoara

SLOVAKIA

Bratislava

SLOVENIA

Ljubljana

SPAIN

Madrid

Barcelona

Bilbao

Palma de Mallorca

Sevilla

Valencia

SWEDEN

Stockholm

Göteborg

Malmö

UNITED KINGDOM

London

Birmingham

Bristol

Edinburgh

Glasgow

Leeds

Manchester

Portsmouth

Sheffield

Ib. Airports:

AUSTRIA

Wien/Schwechat

BELGIUM

Bruxelles/National Brussel/Nationaal

CZECH REPUBLIC

Praha/Ruzyně

DENMARK

Copenhagen Kastrup

FINLAND

Helsinki-Vantaa

FRANCE

Lyon – St-Exupéry

Nice – Côte d'Azur

Paris – Charles-de-Gaulle

Paris– Orly

GERMANY

Berlin Brandenburg International

Düsseldorf

Frankfurt/Main

Hamburg

Köln/Bonn

München

Stuttgart

GREECE

Athens

HUNGARY

Budapest-Ferihegy

IRELAND

Dublin

ITALY

Milano-Linate

Milano-Malpensa

Roma-Fiumicino

THE NETHERLANDS

Amsterdam/Schiphol

POLAND

Warszawa – Okęcie

PORTUGAL

Lisboa

SPAIN

Barcelona

Madrid/Barajas

Palma de Mallorca

SWEDEN

Stockholm/Arlanda

UNITED KINGDOM

Birmingham

Edinburgh

Gatwick

Glasgow

Heathrow

Luton

Manchester

Stansted

2. Maritime ports:**BELGIUM**

Antwerpen

Gent

Oostende, Zeebrugge

BULGARIA

Burgas

CYPRUS

Lemesos

DENMARK

Århus

Københavns Havn

ESTONIA

Tallinn

FINLAND

Helsinki

Kotka, Hamina

Turku

FRANCE

Bordeaux

Calais, Dunkerque

Le Havre

Marseille

Nantes Saint-Nazaire

Rouen

GERMANY

Bremerhaven, Bremen

Hamburg

Lübeck

Rostock

Wilhelmshaven

GREECE

Igoumenitsa

Patras

Pireus

Thessaloniki

IRELAND

Cork

Dublin

Limerick

ITALY

Ancona

Bari

Genova

Gioia Tauro

La Spezia

Livorno

Napoli

Palermo

Ravenna

Taranto

Trieste

Venezia

LATVIA

Rīga

Ventspils

LITHUANIA

Klaipėda

MALTA

Valletta, Marsaxlokk

THE NETHERLANDS

Amsterdam

Rotterdam

Terneuzen, Vlissingen

POLAND

Gdansk, Gdynia

Świnoujście, Szczecin

PORTUGAL

Leixões (Porto)

Lisboa

Sines

ROMANIA

Constanța

SLOVENIA

Koper

SPAIN

Algeciras

Barcelona

Bilbao

Cartagena

Gijón

A Coruña

Las Palmas

Palma de Mallorca

Sevilla

Tarragona

Valencia

SWEDEN

Göteborg

Luleå

Malmö

Stockholm

Trelleborg

UNITED KINGDOM

Belfast

Bristol

Cardiff, Newport

Dover

Felixstowe

Forth (Edinburgh)

Glasgow

Grimsby, Immingham

Liverpool

London

Southampton, Portsmouth

Tees and Hartlepool

3. Border crossing points to neighbouring countries:

EU Member State	Neighbouring Country	Border Crossing (Road)	Border Crossing (Rail)
BULGARIA	SERBIA	Kalotina	Kalotina
	FYROM	Gueshevo	Gueshevo
	TURKEY	Svilengrad	Svilengrad
ESTONIA	RUSSIA	Luhamaa	Koidula
FINLAND	RUSSIA	Vaalimaa	Vainikkala
GREECE	ALBANIA	Kakavia	Krystallopigi
	FYROM	Evzoni	Idomeni
	TURKEY	Kipi	Pythion
HUNGARY	UKRAINE	Beregsurany	Zahony
	CROATIA	Letenye	Gyekenyes
	SERBIA	Szeged	Kelebia
LATVIA	RUSSIA	Terehova	Zilupe
	BELARUS	Krāslava-Paternieki	Krāslava-Indra
LITHUANIA	RUSSIA	Kybartai	Kybartai
	BELARUS	Medininkai	Kena
POLAND	RUSSIA	Grzechotki	Braniewo
	BELARUS	Kukuryki	Terespol
	UKRAINE	Korzowa	Przemysl
ROMANIA	UKRAINE	Siret	Vicsany
	MOLDOVA	Ungheni	Ungheni
	SERBIA	Moravitsa	Moravitsa
SLOVENIA	CROATIA	Obrezje	Dobova
SLOVAKIA	UKRAINE	Cierna nad Tisou	Cierna nad Tisou

3. Further reading

- Road Tolling: Directive 2004/52/EC and Decision 2009/750/EC
http://ec.europa.eu/transport/themes/its/road/application_areas/electronic_pricing_and_payment_en.htm
- Evaluations of the 2007-2013 programming period:
http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm#12
- Transport Investment under Structural and Cohesion Funds in 2007-2013 programmes
http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm
- EU2020 Country Fiches prepared by DG MOVE (Intranet Website)
http://intranet/MOVE-EUROPE-2020/country_profiles.htm

A.7-2 Railway⁵⁰

Thematic objectives	Investment priorities	Ex ante conditionality	Criteria for fulfilment
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7))	<p>ERDF + CF:</p> <ul style="list-style-type: none"> - supporting a multimodal Single European Transport Area by investing in the Trans-European Transport Network (TEN-T) network - developing comprehensive, high quality and interoperable railway systems <p>ERDF:</p> <ul style="list-style-type: none"> - enhancing regional mobility through connecting secondary and tertiary nodes to TEN-T infrastructure 	<p>7.2. <i>Railway</i>: The existence within the comprehensive transport plan(s) or framework(s) of an explicit section on railway development in accordance with the Member States' institutional set-up (including public transport at regional and local level) which supports infrastructure development and improves connectivity to the TEN-T comprehensive and core networks. The investments cover mobile assets, interoperability and capacity building</p>	<ul style="list-style-type: none"> - The existence of a section on railway development within the transport plan(s) or framework(s) as set out above which fulfills legal requirements for strategic environmental assessment and sets out a realistic and mature project pipeline (including a timetable, budgetary framework); - Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

1. When to assess applicability?

The conditionality is applicable, if a MS is planning to allocate funding:

- within ERDF/CF to support for:
 - o multimodal Single European Transport Area by investing in the TEN-T network (Art. 5 (7) (a) of the ERDF Regulation and Art.3 (d) (i) of the CF Regulation), and/or
 - o developing comprehensive, high quality and inter-operative railway systems (Art. 5 (7) (d) of the ERDF Regulation and Art.3 (d) (iii) of the CF Regulation);
- within ERDF to support for enhancing regional mobility though connecting secondary and tertiary nodes to TEN-T infrastructure (Art. 5 (7) (b) of the ERDF Regulation).

⁵⁰ The table below is based on the Council compromise text.

2. Definitions⁵¹

Transport mode means railway, inland waterways, road, maritime or/and air transport.

Multimodal transport means the carriage of freight and /or passengers using two or more modes of transports

The comprehensive network constitutes the basic layer of the TEN-T. It consists of all existing and planned infrastructure meeting the requirements of the Guidelines. The comprehensive network is to be in place by 31 December 2050 at the latest.

The core network consists of those parts of the comprehensive TEN-T network which are of the highest strategic importance for the achievement of the objectives concerning the development of the trans-European network. It constitutes the backbone of the multi-modal mobility network. It concentrates on those components of TEN-T with the highest European added value: cross-border missing links, key bottlenecks and multi-modal nodes. It is the outcome of a two-step methodology identifying first main nodes within the EU and then connecting these nodes by multimodal links (road, rail, inland waterway) according to availability or feasibility, taking into account effectiveness and efficiency and preferably using existing infrastructure. The core network is to be in place by 31 December 2030 at the latest.

The core nodes consist of 82 urban main nodes (comprising all Member States' capitals, all "MEGA" cities according to ESPON and all other large urban areas or conurbations, including their entire relevant multimodal infrastructure as far as part of the comprehensive network), ports which exceed a certain volume threshold (at least 1 % of the total transshipment volume of all EU seaports) or provide the only access to a coastline of a NUTS 1 inland region and the 46 most relevant border crossing points. You will find in the annex below the list of nodes concerning each Member State (See the annex attached to the fiche related to Road conditionality).

Lines designated to the Rail Freight Corridors mean lines which are designated to a Rail Freight Corridor on the basis of Regulation 913/2010/EC.

The European Rail Traffic Management System (ERTMS) is the system concerning the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European conventional and high-speed rail systems.

The concept of "realistic and mature project pipeline" has to be understood in the context of the whole project cycle starting from planning until the implementation. It means a list of projects for which:

- A feasibility study (including options analysis and preliminary design) has been concluded;
- There is a positive socio-economic Cost Benefit Analysis (including detailed estimated costs) demonstrating financial feasibility and the need for public financial contributions;

⁵¹ Most of the definitions are based on the Commission's proposal for the TEN-T Regulation – adjustments might therefore intervene in the coming weeks to align them to the outcome of the trilogues on the TEN-T Regulation.

- EIA (environmental impact assessment) and other assessments (e.g. under Habitats and Water Framework Directives) are ideally finished or at least sufficiently advanced (i.e. consultations with the public and other authorities finished) and a development consent is expected without outstanding environmental issues;
- State aid issues are cleared;
- There is a detailed implementation timetable, detailing procurement procedures (call for tenders can be expected to be completed in accordance to the timetable) and permission procedures (these should be ready to start: for instance land expropriations are well advanced and can be completed in sufficient time for the start of the works, as programmed).

3. Source of information for assessment

- Detailed maps of the comprehensive and the core network defined in the TEN-T Guidelines:

http://ec.europa.eu/transport/themes/infrastructure/revision-t_en.htm

- ERTMS - European Deployment Plan and National Deployment Plans

http://ec.europa.eu/transport/rail/interoperability/ertms/edp_map_en.htm

- Rail Freight Corridors

http://ec.europa.eu/transport/modes/rail/infrastructures/rail_freight_oriented_network_en.htm

4. Rationale for the *ex ante* conditionality

A lack of capacities at national and regional level to develop railway infrastructure and modernising mobile assets can seriously undermine the investment in railway infrastructure.

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

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>The existence of a section on railway development within the transport plan(s) or framework(s) as set out above which :</i></p> <ul style="list-style-type: none"> ▪ The transport plan(s) or framework(s) contains a section on railway development. 		
<p>– <i>fulfills legal requirements for strategic environmental assessment:</i></p> <ul style="list-style-type: none"> ▪ An environmental report has been carried out to identify, describe and evaluate the likely significant effects on the environment of the implementation of the railway section within the plan or framework for transport investments and reasonable alternatives taking into account the objectives and the geographical scope of the plan or framework for transport investments. ▪ The draft plan or framework for transport investments and the environmental report has been made available to the public and the authorities designated by the Member States who are likely to be concerned by the environmental effects of the implementing plans. ▪ Where the implementation of the plan or framework for transport investments is likely to have significant effects on the environment in another Member State (transboundary effects), a copy of the draft plan or framework and the relevant environmental report has been forwarded to the other Member States. ▪ The environmental report and the opinions expressed in the relevant consultations have been taken into account before the adoption of the plan or framework for transport investments. 		
<p>– <i>sets out a realistic and mature project pipeline (including a timetable, budgetary framework)</i></p> <ul style="list-style-type: none"> ▪ The railway section within the plan or framework for transport investments includes a table containing: <ul style="list-style-type: none"> ○ a list of railway prioritised projects (studies, upgrading or works) that the Member State envisages launching over the period; ○ the foreseen expenditures and a financing plan, ○ a realistic timetable for delivery (including design phase, development consent, procurement and permission procedures, and potential state aid notification) and for implementation (per phase for bigger projects). 		

Measures to ensure the capacity of intermediary bodies and beneficiaries to deliver the project pipeline.

- The Member State has provided an adequate description of the measures already in place to ensure the capacity of intermediary bodies and beneficiaries to deliver railway project pipeline.
 - These measures are based on the analysis of both railway bottlenecks and of the weaknesses of intermediary bodies and beneficiaries to deliver timely railway project pipeline;
 - These measures cover the deployment of ERTMS and comply with EU obligations on railway governance and corridor management;
 - These measures include training and appropriate internal procedures to monitor and identify potential delays and to ensure a smooth and effective procurement;
 - A early warning system is in place to identify and solve any difficulties rising from intermediary bodies and beneficiarries when delivering railway project pipeline;
 - Adequate assistance shcemes are in place to help beneficiaries during procedure and implementation to be able to replace projects quickly when implementation is blocked.

Annex: BACKGROUND INFORMATION

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

- **TEN-T Regulation: Proposal from the Commission for a Regulation on Union guidelines for the development of the trans-European transport network (COM/2011/0650 final/2 - 2011/0294 (COD))**⁵²

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0650:REV1:EN:HTML>

Annex I: Maps of the comprehensive and the core network – Vol. 2/33: Inland waterways and ports, Railways (freight), ports and rail-road terminals

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part02.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part02.pdf)

Annex I: Maps of the comprehensive and the core network – Vol. 3/33: Railways (passengers) and airports, roads, ports, rail-road terminals and airports

[http://ec.europa.eu/transport/themes/infrastructure/doc/com\(2011\)_650_final_2_annex_i_part03.pdf](http://ec.europa.eu/transport/themes/infrastructure/doc/com(2011)_650_final_2_annex_i_part03.pdf)

Annex II: List of nodes of the core network

http://ec.europa.eu/transport/themes/infrastructure/doc/final_annexii.pdf

- **Strategic Environmental Assessment (SEA) Directive:**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

An environmental assessment shall be carried out for all plans and programmes which are prepared for transport and which set the framework for future development consent of projects⁵³.

- **Rail Interoperability**

- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community:

This reference will be replaced in the coming weeks to reference reflecting the outcome of the trilogue on the TEN-T Regulation.

⁵³ Annex I and II of the Environmental Impact Assessment Directive 85/337/ECC provide the list of the concerned projects: Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more; Construction of railways or intermodal transshipment facilities, and of intermodals terminals.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:191:0001:0045:EN:PDF>

- ERTMS: COMMISSION DECISION of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:051:0001:0065:EN:PDF>

- DG MOVE Website on Rail and ERTMS

http://ec.europa.eu/transport/rail/interoperability/ertms/edp_map_en.htm

- **Rail Freight Corridors**

- Regulation 913/2010/EC concerning a European Rail Network for Competitive Freight:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:276:0022:0032:EN:PDF>

2. Extract of relevant documents

See the annex of the fiche on Road *ex ante* conditionality.

3. Further reading

- Evaluations of the 2007-2013 programming period:

http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm#12

- Transport Investment under Structural and Cohesion Funds in 2007-2013 programmes

http://ec.europa.eu/regional_policy/information/evaluations/index_en.cfm

- EU2020 Country Fiches prepared by DG MOVE (Intranet website)

http://intranet/MOVE-EUROPE-2020/country_profiles.htm

DRAFT

A.8-1 Access to employment

[to be transmitted later on in the coming days]

A.8-2 Self-employment

[to be transmitted later on in the coming days]

A. 8-3 Labour market institutions

[to be transmitted later on in the coming days]

A.8-4 Active and healthy ageing

[to be transmitted later on in the coming days]

A.8-5 Adaptation of workers, enterprises / entrepreneurs to change

[to be transmitted later on in the coming days]

A. 9-1 Early school leaving

[to be transmitted later on in the coming days]

A.9-2 Higher education

[to be transmitted later on in the coming days]

A.9-3 Lifelong learning

[to be transmitted later on in the coming days]

A.10-1 Active inclusion

[to be transmitted later on in the coming days]

A.10-2 Roma inclusion

[to be transmitted later on in the coming days]

A.10-3 Health

[to be transmitted later on in the coming days]

A.11 Member States administrative efficiency

[to be transmitted later on in the coming days]

B. GENERAL *EX ANTE* CONDITIONALITIES

B.1 Anti-discrimination

[to be transmitted later on in the coming days]

B.2 Gender equality

[to be transmitted later on in the coming days]

B.3 Disability

[to be transmitted later on in the coming days]

B. 4. Public procurement⁵⁴

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
4. Public procurement	The existence of arrangements for the effective application of EU public procurement law in the field of the CSF Funds.	<ul style="list-style-type: none"> – Arrangements for the effective application of EU public procurement rules through appropriate mechanisms; – Arrangements which ensure transparent contract award procedures; – Arrangements for training and dissemination of information for staff involved in the implementation of the funds; – Arrangements to ensure administrative capacity for implementation and application of EU public procurement rules.

1. When to assess applicability?

The conditionality is applicable to all investment priorities the beneficiaries of which are required to comply with public procurement rules and when it is considered that its non-fulfilment would lead to a clearly identified risk to the effective and efficient achievement of a relevant specific objective.

2. Definitions

Directive 2004/18/EC is based on the principles that: advertisement of contracts in the Official Journal of the European Union gives firms throughout the European Union an equal opportunity to tender. Bidders are treated equally with no discrimination on the grounds of nationality or origin of the goods or services and objective criteria are applied to tendering and award procedures.

Public sector: central government, local government and other bodies including corporations mainly funded by the public sector or subject to its management supervision or mainly appointed by the public sector and not having an industrial or commercial character (“contracting authorities”⁵⁵). Where a private body acts as an agent for the contracting authorities or where more than 50% of funding is provided by contracting authorities in relation to certain contracts connected with some building works, the public procurement rules will also apply.

⁵⁴ The text of the table is based on the Council Compromise text of 24 April 2012.

⁵⁵ The contracting authorities are not obliged to be part of public law according to applicable national legislation.

3. Source of information for assessment

Findings of relevant audit reports conducted in Member States.

4. Rationale for the *ex ante* conditionality

Lack of knowledge and experience, as well as inappropriate regulatory arrangements and procedures in place leads to weaknesses in public procurement.

DRAFT

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

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p>– <i>Arrangements for the effective application of EU public procurement rules through appropriate mechanisms:</i></p> <ul style="list-style-type: none"> ▪ EU directives on public procurement (2004/17 and 2004/18) have been transposed by the Member State; ▪ Arrangements are in place to address the main types of errors identified by the Commission in relation to the Member State public procurement in the field of the ESIFunds (e.g. conflict of interests, contract amendmends). 		
<p>– <i>Arrangements which ensure transparent contract award procedures:</i></p> <ul style="list-style-type: none"> ▪ Guidance on award of public contracts below thresholds has been prepared by the Member State and made available to the potential beneficiaries and the staff concerned in the managing authorities and intermediate bodies. 		
<p>– <i>Arrangements for training and dissemination of information for staff involved in the implementation of the funds:</i></p> <ul style="list-style-type: none"> ▪ Training for all staff involved with EU public procurement rules at all relevant levels has been provided or has been planned; ▪ Existence of a system of dissemination of the relevant guidance towards managing authorities, intermediate bodies, certifying authorities, audit authorities and beneficiaries (via websites, direct mail, etc.) and of exchange of information for all staff involved in the public procurement for the implementation of ESI Funds. 		
<p>– <i>Arrangements to ensure administrative capacity for implementation and application of EU public procurement rules:</i></p> <ul style="list-style-type: none"> ▪ Existence of a central body (or a coordinated network of bodies) having the administrative capacity (sufficient number and qualified staff) to give advice on application of EU public procurement rules; ▪ Technical assistance (e.g. guidance documents, external experts) ensured for all the bodies involved in the application of public procurement. 		

Annex: BACKGROUND INFORMATION

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

- Directive 2004/17 – procurement in the water, energy, transport and postal services sectors

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>

- Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>

2. Extract of relevant documents

- Guidelines for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts co-financed by the Structural Funds or the Cohesion Fund during the programming periods 2000-2006 and 2007-2013

http://ec.europa.eu/regional_policy/information/guidelines/index_en.cfm

This document sets out guidelines for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts co-financed by the Structural Funds or the Cohesion Fund during the programming periods 2000-2006 and 2007- 2013.

When the Commission services detect such irregularities during audits, they must determine the amount of the financial correction applicable. If, when the Commission proposes a correction, the Member State does not agree to make the correction itself in accordance with Article 39(1) of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006, the correction is made by Commission decision under Article 39 paragraph 3 of Regulation (EC) No 1260/1999 or the Article 99 of Regulation (EC) No 1083/2006. These guidelines are intended to help the Commission services to maintain a common approach in dealing with these cases of irregularities. The control authorities of the Member States may also detect irregularities of the same type during their controls. In this case, they are required to make the necessary corrections in accordance with Article 39 paragraph 1 of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006.

The competent authorities in the Member States are recommended to apply the same criteria and rates when correcting irregularities detected by their own services during the checks and audits under Articles 4 and 10 of Regulation (EC) 438/2001 and Articles 60 (b) and 62(1)(a) and (b) of Regulation (EC) No 1083/2006 and other checks, unless they apply yet stricter standards.

The cases described in the table in the Annex are the types of situations found most frequently. Other cases not shown in the table should be dealt with in accordance with the same principles.

The amounts and rates take account of the relevant Community regulations and the guidance documents on financial corrections, in particular:

Community Directives relating to the coordination of procedures for the award of public contracts:

- 92/50/EEC - Public service contracts,
- 93/36/EEC - Public supply contracts,
- 93/37/EEC - Public works contracts,

- 93/38/EEC - Public contracts in the water, energy, transport and communications sectors, 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,
- 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,
- 92/13/EEC - remedies relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,
- 89/665/EEC - review procedures to the award of public supply and public works contracts
- 2004/17/EEC - Public contracts in the water, energy, transport and postal services sectors,
- 2004/18/EEC - Public works contracts, public supply contracts and public service contracts,
- 2005/51/EC - amending Annex XX of Directive 2004/17/EC and Annex VIII of Directive 2004/18/EC,
- Commission Directive 2001/78/CE of 13 September 2001 on the use of standard forms in the publication of public contract notices,

And

Regulation (EC) No 1564/2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC,

Decision 2005/15/EC on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (7.1.2005), the rules and the principles of the Treaty, concerning mainly the free circulation of merchandises (Article 28 of the EC Treaty), the right of establishment (Article 43), the free provision of services (Article 49), the non-discrimination and the equality of treatment, the transparency, the proportionality and the mutual recognition.

Under Article 12 of Regulation (EC) No 1260/1999, operations financed by the Funds must be in conformity with the provisions of the Treaty, with instruments adopted under it and with Community policies, including on the award of public contracts. The same obligations have been provided for the programming period 2007-2013 under Article 9, paragraphs 2 and 5 of the Regulation (EC) No 1083/2006.

Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests states: *Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.*"

Article 39(1) of Regulation (EC) No 1260/99 provides that "The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made shall consist in cancelling all or part of the Community contribution. The same obligations have been provided for the programming period 2007-2013 under Article 98, paragraph 2, of the Regulation (EC) No 1083/2006. Pursuant to Article 39, paragraphs 2 and 3, if the Member State does not make the necessary financial corrections, the Commission may itself decide to make the financial corrections required by cancelling all or part of the contribution of the Funds to the assistance concerned. To determine the amount of a correction, the Commission takes account, in compliance with the principle of proportionality, of the type of irregularity or change and the extent and financial implications of the shortcomings found in the management or control systems of the Member States. The same obligations have been provided for the programming period 2007-2013 under Article 99 of the Regulation (EC) No 1083/2006.

The amounts and rates of financial corrections set out in the table in the Annex are applied to individual cases of irregularities due to non-compliance with the rules on public procurement. Where systemic or repeated irregularities are detected in the application of the rules on public procurement, financial corrections at flat rates or by extrapolation (within the meaning of Article 4 of Regulation No 448/2001 or Article 99 of Regulation (EC) No 1083/2006) can be made to all the operations and/or programmes affected by the irregularities.

The amounts and rates of financial corrections set out in the table in the Annex may be increased where irregular applications for payment are presented to the Commission after the date on which the latter has explicitly informed the Member State, by reasoned opinion based on Article 226 of the Treaty, of an infringement of the public procurement regulations.

1. CONTRACTS SUBJECT TO THE EC PUBLIC PROCUREMENT DIRECTIVES

No	Irregularity		Recommended correction (Note n° 1)
1	Non-compliance with the advertising procedures	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, except in the cases referred to in point 2 below. This is a flagrant disregard of one of the conditions for Community co-financing.	100% of the value of the contract involved
2	Non-compliance with the advertising procedures	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, but was advertised to some extent allowing economic operators located in another Member State access to the contract.	25% of the value of the contract involved
3	Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or the absence of an unforeseen circumstance for complementary works and services or for supplies. (Note No 2)	The main contract was awarded in accordance with the EC Public Procurement Directives, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded without complying with the provisions of the Public Procurement Directives namely the ones related to the negotiated procedures without publication for reasons of extreme urgency brought about by unforeseeable events or for attribution of complementary supplies, works and services.	100% of the value of the contract involved in the cases where the total of supplementary contracts (whether or not formalised in writing) awarded without complying with the provisions of the Public Procurement Directives do not exceed the thresholds of the Directives and the 50% of the value of the original contract the correction may be reduced to 25%.
4	Additional works or services exceeding the limit laid down by the Directives provided in unforeseen circumstances (Note No 2)	The main contract was awarded in accordance with the provisions of the EC Directives, but was followed by one or more supplementary contracts exceeding the value of the original contract by more than 50%. The additional works themselves do not constitute a separate work within the meaning of Article 1(c) of Directive 93/37 or Article 1(2) (a) and 2(b) of Directive 2004/18 or a separate service within the meaning of Article 1(a) of Directive 92/50 or Article 1(2) (a) and 2(d) of Directive 2004/18.	100% of the amount exceeding 50% of the value of the original contract

		<p>In cases where the additional works or services exceed the thresholds of the Directives and constitute a separate work or service, it is necessary to take account of the aggregate value of all the additional works or services for the purposes of the application of the Public Procurement Directives.</p> <p>Where the additional works or services constitute a separate work or service and exceed the thresholds laid down by the Directives, the above mentioned point 1 applies.</p> <p>Where the additional works or services constitute a separate work or service but do not exceed the thresholds laid down by the Directives, point 21 below applies.</p>	
5	Failure to state all the selection and contract award criteria in the tender documents or tender notice	The contract was awarded in compliance with the advertising rules of the Public Procurement Directives, but the tender documents or tender notice failed to state all the selection and/or award criteria or to describe them sufficiently.	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
6	Application of unlawful contract award criteria	The contract was awarded applying unlawful contract award criteria (for example, use of a selection criterion for the award of the contract, noncompliance with the criteria stated by the contracting authority in the tender notice or tender documents or incorrect and/or discriminatory application of contract award criteria).	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
7	unlawful selection and/or contract award criteria laid down in the tender procedure	Cases in which certain operators have been deterred from bidding on account of unlawful restrictions laid down in the tender notice or tender documents (for example, the obligation to already have an establishment or representative in the country or region, or setting technical standards that are too specific and favour a single operator or the possession of experience in the region, etc.).	<p>25% of the value of the contract.</p> <p>(A financial correction of 100% of the value of the contract may be applied in the most serious cases when there is a deliberate intention to exclude certain bidders.)</p>
8	Insufficient or discriminatory definition of the subject-matter of the	The description in the tender documents or tender notice is discriminatory or insufficient for bidders to determine the subject-matter of the contract or for the contracting authorities to award the	25% of the value of the contract. This amount may be reduced to 10% or 5%

	contract	contract.	depending on seriousness.
9	Negotiation during the award procedure	The contract was awarded by open or restricted procedure but the contracting authorities negotiated with the bidders during the award procedure, except where the discussions were solely intended to clarify or supplement the content of their bids or specify the obligations of the contracting authorities.	25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.
10	Reduction in the scope of the contract (Note No 2)	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract without making a proportional reduction in the value of the contract. (This correction applies even in cases where the amount of the reduction is used to carry out other works).	Value of the reduction in the scope Plus 25% of the value of the final scope
11	Reduction in the scope of the contract (Note No 2)	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract with a proportional reduction in the value of the contract already carried out. (This correction applies even in cases where the amount of the reduction is used to carry out irregular supplementary contracts).	25% of the value of the final scope
12	Incorrect application of certain ancillary elements	The contract was awarded in compliance with the provisions of the Public Procurement Directives, but without complying with certain ancillary elements, such as publication of the notice of award of the contract. Note: If this type of irregularity is only of a formal nature without potential financial impact, no correction will be made.	2%, 5% or 10% of the value of the contract, according to the seriousness of the irregularity and whether a repeat occurrence

2. CONTRACTS NOT OR NOT FULLY SUBJECT TO THE PUBLIC PROCUREMENT DIRECTIVES (PUBLIC CONTRACTS BELOW THE THRESHOLDS FOR APPLICATION OF THE COMMUNITY DIRECTIVES AND PUBLIC CONTRACTS FOR SERVICES LISTED IN ANNEX I B TO DIRECTIVE 92/50/EEC, ANNEX XVI B TO DIRECTIVE 93/38/EEC, ANNEX II B TO DIRECTIVE 2004/18/EC AND ANNEX XVII B TO DIRECTIVE 2004/17/EC)

The European Court of Justice (ECJ) has confirmed in its case-law that the rules and the principles of the EC Treaty apply also to contracts outside the scope of the Public Procurement Directives.

Contracting entities from Member States have to comply with the rules and principles of the EC Treaty whenever they conclude public contracts falling into the scope of that Treaty. These principles include the free movement of goods (Article 28 of the EC Treaty), the right of establishment (Article 43), the freedom to provide services (Article 49), non-discrimination and equal treatment, transparency, proportionality and mutual recognition (*Commission interpretative communication n^o 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The principles of equal treatment and non-discrimination on grounds of nationality imply an obligation of transparency which, according to the ECJ case-law, "consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed" (*Commission interpretative communication n^o 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The lack of conformity with these rules and principles represents risks for the Community funds. Consequently, financial corrections should be applied to the irregularities detected in the contracts that do not conform or conform partially to the Community Directives. The rates to be applied depending on the type of irregularity are the following:

No	Irregularity Recommended correction		Recommended correction
21	Non-compliance with the requirement of an adequate degree of advertising and transparency(Note No 3)	Contract awarded without adequate competitive tendering, involving noncompliance with the principle of transparency	25% of the value of the contract
22	Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or for complementary works and services brought about unforeseen circumstance. (Note No 2)	The main contract was awarded after adequate competitive tendering, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded without adequate competition in the absence of reasons of extreme urgency brought about by unforeseeable events or (for contracts of works and services) in the absence of unforeseen circumstances justifying them.	25% of the value of the contract(s) attributed without adequate competition.
23	Application of unlawful selection and/or contract award criteria	Application of unlawful criteria which deter certain bidders on account of unlawful restrictions laid down in the tender procedure (for example, the obligation to have an establishment or representative in the country or region or the setting of technical standards that are too specific and favour a single operator).	10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.
24	Breach of the principle of equal treatment	Contracts awarded in accordance with the rules on advertising but where the contract award procedure breaches the principle of equal treatment of operators (for example, when the contracting authorities have made an arbitrary choice of candidates with whom they negotiate or if they give preferential treatment to one of the candidates invited to negotiate).	10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.

Note n° 1. The amount of the financial correction is calculated according to the amount declared to the Commission related to the contract affected by the irregularity. The percentage of the suitable scale applies to the amount of the expenditure declared to the Commission for the contract in question. Practical example: The amount of the expenditure declared to the Commission for a work contract concluded after the application of illegal criteria is 10,000,000€. The applicable correction rate is 25% in agreement with the scale n° 6. The amount to be deducted from the expenditure statement to the Commission is 2,500,000€. Accordingly the Community cofinancing is reduced according to the cofinancing rate of the measure under which the contract in question was financed.

Note n° 2) In the application of these guidelines for the financial correction for non conformity with the rules relating to the public procurement, one limited degree of flexibility can be applied to the modifications of a contract after its attribution provided that (1) the contracting authority does not alter the general economy of the invitation to tender or the terms of reference by modifying an essential element of the attributed contract, (2) modifications, if they had been included in the invitation to tender or in the terms of reference, would not have had any substantial impact on the received offers. The essential elements of the attribution of the contract concern mainly the value of the contract, the nature of the works, the completion period, the terms of payment, and the materials used. It is always necessary to make an analysis on a case by case basis.

Note n° 3. The concept of “sufficient degree of advertising” must be interpreted in the light of Commission interpretative communication No 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, and in particular:

a) The principles of equal treatment and non-discrimination imply an **obligation of transparency** which consists in ensuring, for the benefit of any potential bidder, **a degree of advertising sufficient to enable the contract to be subject to competition**. The obligation of transparency requires that an **undertaking located in another Member State can have access to appropriate information regarding the contract before it is awarded**, so that, if it so wishes, it would be **in a position to express its interest** in obtaining the contract.

b) For individual cases where, because of particular circumstances such as a very modest economic interest at stake, a contract award would be of no interest to economic operators located in other Member States. In such a case the effects on the fundamental freedoms are to be regarded as too uncertain and indirect to warrant the application of standards derived from primary Community law and consequently there is no ground for application of financial corrections.

It is the responsibility of the individual contracting entities to decide whether an intended contract award might potentially be of interest to economic operators located in other Member States. In the view of the Commission, this decision has to be based on an evaluation of the individual circumstances of the case, such as the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographic location of the place of performance.

3. Further reading

DRAFT

B. 5. State aid⁵⁶

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
5. State aid	The existence of arrangements for the effective application of EU state aid law in the field of the CSF Funds.	<ul style="list-style-type: none"> – Arrangements for the effective application of EU State aid rules; – Arrangements for training and dissemination of information for staff involved in the implementation of the funds; – Arrangements to ensure administrative capacity for implementation and application of EU State aid rules.

1. When to assess applicability?

This conditionality is linked to ensuring effective implementation and application of EU State aid law.

This conditionality is relevant and applicable where the support granted under a priority may constitute State aid (incl. *de minimis* aid). In principle, the State aid conditionality applies to all specific objectives determined and for all types of support (including grants and financial instruments) but it will need to be determined case by case taking into account the estimated risk to the effective and efficient achievement of a relevant specific objective.

2. Definitions (currently applicable – some of the regulations and guidelines mentioned below are under revision and might be subject to changes as of 2014)

State aid is defined by Article 107(1) TFEU as "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States.*"

Notification and ex ante authorisation: Member States are obliged to notify the Commission of any plan to grant or alter State aid, in accordance with Article 108(3) TFEU. Member States must not put the aid measure into effect until the Commission has reached a decision.

There are however some exceptions. The following types of aid are exempted from prior notification:

- *de minimis* aid,
- aid granted under the General Block Exemption Regulation (GBER),

⁵⁶ The text of the table below is based on the Council Compromise text of 24 April 2012.

- aid granted under an existing scheme⁵⁷,
- aid for projects entrusted as SGEI in accordance to Commission's SGEI decision⁵⁸, and
- aid to which Regulation 1370/2007⁵⁹ applies.

Unlawful (or illegal) aid: New aid put into effect in contravention of Article 108(3) TFEU, which means granted by a Member State without required prior notification to the Commission and/or without having obtained the authorisation by the Commission. Unlawful aid, after examination by the Commission, can be found to be compatible or incompatible with the internal market. Aid which is both unlawful and incompatible aid is subject to a Commission's recovery decision.

Incompatible aid: State aid which the Commission finds to be incompatible with the internal market because it does not fall under one of the exceptions foreseen in the Treaty, in particular Article 107(2) or (3). Incompatible aid may not be granted and, in case it has already been unlawfully granted, it can be subject to a recovery decision.

The *de minimis* Regulation⁶⁰ was introduced in order to exempt small aid amounts. It sets a ceiling below which aid is deemed not to fall within the scope of Article 107(1) TFEU and is therefore exempt from the notification requirement laid down in Article 108(3) TFEU.

- Aid of no more than EUR 200 000 granted over a period of three years to one undertaking (including all undertakings of the same group) is not regarded as state aid within the meaning of Article 107(1) TFEU. It is another requirement that the recipient is duly informed that the support is granted as *de minimis* aid.
- A specific ceiling of EUR 100 000 applies to road transport.

General Block Exemption Regulation (GBER)⁶¹: The obligation for Member States for compulsory prior notification is removed for certain types of aid as identified in the GBER. As a result, Member States are able to grant aid that meets the conditions laid down in that Regulation without the formal notification procedure and only have to submit information sheets on the implemented aid.

The GBER simplifies the treatment of State aid measures favouring job creation and boosting competitiveness, i.e. measures in favour of SMEs. It foresees 26 categories of state aid measures, which are considered to be compatible with State aid rules without requiring prior notification to the Commission, as would otherwise be foreseen under TFEU. The GBER also contains a series of conditions which aim to ensure that the aid measures will indeed lead the beneficiary to undertake a project or activity which he would not have engaged in without the aid (incentive effect).

Aid schemes: By complying with all terms of a State aid scheme, the State aid grantor can provide State aid without having it individually notified to the Commission. However, before any aid grantor can apply a scheme, it has to notify the Commission the scheme and the Commission has to approve it (with the exception of block exempted schemes).

⁵⁷ For which the aid amount is below the notification threshold

⁵⁸ http://ec.europa.eu/competition/state_aid/legislation/sgei.html

⁵⁹ Regulation (EC) No 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road

⁶⁰ This Regulation is subject to changes under the State aid modernisation initiative.

⁶¹ This Regulation is subject to changes under the State aid modernisation initiative.

Individual aid: notifiable awards of aid on the basis of an aid scheme (for instance because the aid amount is above a notification threshold).

Ad hoc aid: State aid not awarded on the basis of an aid scheme.

"Deggendorf" Case (*Case C-188/92, TWD Textilwerke Deggendorf GmbH v Germany, ("Deggendorf") ECR [1994], I-00833*): when assessing a new aid measure, the Commission shall take into account the fact that the beneficiary of this new aid has not fully repaid earlier aid that is subject to a recovery decision. As a result, the Commission may decide not to authorise the Member State to grant otherwise compatible aid until the previous aid has been fully reimbursed.

SME stands for small and medium-sized enterprises – as defined in EU law (Commission Recommendation of 6 May 2003). The main factors determining whether a company is an SME are (1) number of employees and (2) either turnover or balance sheet total.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

3. Source of information for assessment

DG Competition website, State aid legislation:

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

State aid register:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

4. Rationale for the *ex ante* conditionality

Under Article 107 TFEU, State aid is incompatible with the internal market unless its positive effects (in terms of contribution to common interest objectives) outweigh its negative effects aid (in terms of effect on trading conditions and competition in the Union). Member States must ensure that mechanisms are in place to prevent incompatible aid from being granted.

EU State aid rules provide a framework for ensuring that aid is well-designed, targeted at identified market failures and objectives of common interest, and least distortive. In particular, State aid should induce the aid beneficiary to undertake activities it would not have done without the aid (incentive effect) and complement, without replacing, private spending, while keeping the internal market competitive and open.

Given the role of Member States in the proper enforcement of State aid rules in approved or block-exempted measures, it is essential that appropriate training and capacity building are conducted at all administrative levels.

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

Criteria for fulfilment	Criteria fulfilled?	
	YES/NO	Elements of non-fulfilment
<p>– Arrangements for the effective application of EU State aid rules in the field of ESI Funds:</p> <ul style="list-style-type: none"> ▪ Measures are in place to prevent the granting of illegal aid, e.g. <ul style="list-style-type: none"> ▪ respect of cumulation rules, ▪ respect of the "Deggendorf" obligation, ▪ amendments into an existing scheme are systematically subject to a verification to ensure that the scheme is still covered by the Commission approval decision or the General block exemption Regulation; ▪ In case of repayable assistance provided through financial instruments, measures are in place to ensure that the managing authority, the fund of funds and the bodies implementing the financial instruments comply with State aid rules. The compliance is required at the level of the fund manager, co-investor(s) and final recipients. ▪ Capacity to enforce recovery orders with respect to both illegal and incompatible aid, which covers: <ul style="list-style-type: none"> ○ the possibility to refer, if necessary, to national courts in case of illegal aid and recovery orders ○ effectiveness of timely recovery ▪ Capacity to ensure proper controls of compliance the GBER and approved schemes: <p>There are procedures and guidelines to ensure that granting authorities properly check eligibility and compatibility conditions (incentive effect, limitation of the aid to maximum aid intensities, eligibility conditions of schemes, SME-status of beneficiaries, etc.)</p> <ul style="list-style-type: none"> ▪ Appropriate knowledge about any aid granted, including <i>de minimis</i> <p>There is a system that makes sure that the reporting obligations are fully complied with and in particular the information of aid granted is complete,</p>		

<p>accurate and timely (e.g. central registry for aid granted, <i>de minimis</i> registry, transparency mechanisms).</p>		
<p>– <i>Arrangements for training and dissemination of information for staff involved in the implementation of the funds:</i></p> <ul style="list-style-type: none"> ▪ Appropriate training for staff applying EU State aid rules at all relevant levels (e.g. for dedicated desks) has been provided or is planned; ▪ Existence of a system of dissemination of relevant State aid guidance to managing authorities, intermediate bodies, certifying authorities, audit authorities and beneficiaries, and in case of financial instruments also the fund of funds, and the bodies implementing the financial instruments (via websites, direct mail, etc.) ▪ Existence of a system of exchange of information for all staff applying State aid rules linked to the implementation of ESI Funds. 		
<p>– <i>Arrangements to ensure administrative capacity for implementation and application of EU State aid rules:</i></p> <ul style="list-style-type: none"> ▪ Existence of a central body (or a coordinated network of bodies) having the administrative capacity (sufficient number and qualified staff) to give substantive practical and legal advice on application of EU State aid rules and regularly exercising this capacity in practice; ▪ Possibility for the use of technical assistance (e.g. technical guidance documents) is ensured for all bodies involved in applying State aid rules. 		

Annex: BACKGROUND INFORMATION

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

- Member States need to comply with State aid rules. A compilation of State aid legislation in force can be found on the following webpage:

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

including:

- (1) Core provisions of the Treaty on the Functioning of the European Union (TFEU);
- (2) General Block Exemption Regulation;
- (3) *de minimis* Regulation;
- (4) horizontal rules applying across all industries, setting out the Commission position on compatibility of aid (e.g. regional aid guidelines (RAG), risk capital guidelines, environmental aid guidelines and R&D&I Framework).
- (5) Sector-specific compatibility rules (e.g. on broadband or transport)

2. Extract of relevant documents

- Core provisions of the Treaty on the Functioning of the European Union

Article 107 TFEU
(ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 108
(ex Article 88 TEC)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109
(ex Article 89 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

3. Further reading

- State Aid Modernisation

Most State aid rules are subject to review in 2013 in the framework of the State Aid Modernisation initiative (SAM), and new rules will enter into force in 2013/2014. Regularly updated information is available on the following webpage:

http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

- Regional aid

http://ec.europa.eu/competition/state_aid/regional_aid/regional_aid.html

DRAFT

B. 6. Environmental legislation⁶²

AREA	Ex ante conditionality	Criteria for fulfilment
6. <i>Environmental legislation relating to Environmental Impact Assessment (EIA) and, Strategic Environmental Assessment (SEA)</i>	The existence of arrangements for the effective application of Union environmental legislation related to EIA and SEA.	<ul style="list-style-type: none"> – Arrangements for the effective application of EIA and SEA Directives; – Arrangements for training and dissemination of information for staff involved in the implementation of EIA and SEA Directives; – Arrangements to ensure sufficient administrative capacity.

1. When to assess applicability?

This conditionality is applicable in principle to all OPs involving infrastructure investments (e.g. buildings, roads, ports, airports, waste/water treatment facilities, networks etc.).

However, the applicability of the conditionality depends on the specific objectives determined in the context of each OP and will need to be verified on a case by case basis taking into account the estimated risk to the effective and efficient achievement of a relevant specific objective .

2. Definitions

The EIA Directive foresees that Member States shall adopt all measures necessary to ensure that, before consent is given, public and private projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regards their effects.

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on the following factors: human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage; and the interactions between all these factors.

The SEA procedure can be summarized as follows: an environmental report is prepared in which the likely significant effects on the environment and the reasonable alternatives of the proposed plan or programme are identified. The public and the environmental authorities are informed and consulted on the draft plan or programme and the environmental report prepared. As regards plans and programmes which are likely to have significant effects on the

⁶² The text of the table is based on the Council Compromise text of 24 April 2012.

environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s).

The environmental report and the results of the consultations are taken into account before adoption. Once the plan or programme is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

The SEA and EIA procedures are very similar, but there are some differences:

- the SEA directive requires the environmental authorities to be consulted at the screening stage;
- scoping (i.e. the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA directive;
- the SEA directive requires an assessment of reasonable alternatives whereas under the EIA the developer chooses the alternatives to be studied;
- the SEA directive requires Member States to ensure that environmental reports are of a sufficient quality.
- under the SEA directive Member States must monitor the significant environmental effects of the implementation of plans/programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action.

3. Source of information for assessment

4. Rationale for the *ex ante* conditionality

Lack of knowledge and experience, as well as inappropriate regulatory arrangements and procedures in place leads to weaknesses in application of EU environmental legislation.

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

CRITERIA FOR FULFILMENT	Criteria fulfilled?	
	YES /NO	Elements of non-fulfilment
<p><i>Arrangements for the effective application of EIA and SEA Directives</i></p> <ul style="list-style-type: none"> ▪ EIA/SEA Directives have been transposed by the Member State. However, the existence of an infringement procedure related to the incorrect / incomplete transposition of the EIA / SEA Directives should not automatically lead to the non-fulfilment of the conditionality, but, on a case-by-case basis, it should be verified whether the infringement affects the implementation of the ESI Funds. ▪ Arrangements are in place to ensure the quality of the information used in the EIA process: <ul style="list-style-type: none"> ○ For instance through national committees or other bodies verifying the EIA documentation, existence of specialized authorities, accredited experts preparing the EIA documentation, capacity building, checklists, circulars, technical know-how, etc. ○ Through early and effective opportunities offered to the public to participate in the environmental decision- making procedures. ▪ Arrangements are in place to give access to justice for the public concerned, including non-governmental organisations. 		
<p><i>Arrangements for training and dissemination of information for staff involved in the implementation of EIA and SEA Directives</i></p> <ul style="list-style-type: none"> ▪ Training for all staff involved in the implementation of EIA and SEA Directives at all relevant levels has been provided. ▪ A system of dissemination and exchange of information is in place for all staff involved in the implementation of EIA and SEA Directives for the implementation of ESI Funds at all relevant levels (e.g. through networks of relevant national/regional authorities, websites, newsletters, etc.) 		

<p><i>Arrangements to ensure sufficient administrative capacity</i></p> <ul style="list-style-type: none"> ▪ Existence of specialised authorities⁸¹ having the administrative capacity (sufficient number and qualified staff) to give advice on application of the EIA/SEA Directives. ▪ Technical assistance (e.g. guidelines, guidance documents, external experts) is ensured for the authorities⁶³ involved in the implementation of EIA/SEA Directives. 		
---	--	--

DRAFT

⁶³ The term authorities includes: the competent authorities/services (e.g. transport, energy...), the environmental authorities/services (if other than the competent ones) and other public authorities/services (e.g. road/water agencies). All levels (national/regional/local) should be considered.

Annex: BACKGROUND INFORMATION

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

- **Environmental Impact Assessment (EIA) Directive**

The first EIA Directive of 1985 and its three amendments have been codified by DIRECTIVE 2011/92/EU of 13 December 2011.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>

As a result of a review process, on 26 October 2012, the Commission adopted a proposal for a revised Directive :

<http://ec.europa.eu/environment/eia/pdf/COM-2012-628.pdf>

- **Strategic Environmental Assessment (SEA) Directive (2001/42/EC):**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF>

2. Extract of relevant documents

3. Further reading

DRAFT

B.7 Statistical systems and result indicators⁶⁴

AREA	<i>Ex ante</i> conditionality	Criteria for fulfilment
<p>7. Statistical systems and result indicators</p>	<p>The existence of a statistical basis necessary to undertake evaluations to assess the effectiveness and impact of the programmes.</p> <p>The existence of a system of result indicators necessary to select actions, which most effectively contribute to desired results, to monitor progress towards results and to undertake impact evaluation.</p>	<ul style="list-style-type: none"> – Arrangements for timely collection and aggregation of data with the following elements is in place: <ul style="list-style-type: none"> – the identification of sources and mechanisms to ensure statistical validation; – arrangements for publication and public availability. – an effective system of results indicators including: <ul style="list-style-type: none"> – the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme; – the establishment of targets for these indicators; – the respect for each indicator of the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data; – procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators.

1. When to assess applicability?

This *ex ante* conditionality applies to all programmes.

2. Definitions

- Arrangements: a decision communicated to the Commission.

⁶⁴ The text of the table is based on the Council Compromise text of 24 April 2012.

- Timely collection and aggregation of data: the data need to be collected respecting a timeframe that allows meeting reporting obligations (normally along with the annual reporting cycle).
- Statistical validation: the indicator is based on information collected on all entities / participants concerned by the interventions (statistical population) or on a representative sample of the statistical population. (*This only concerns result indicators.*)
- Publication and public availability: Along with Annual Reporting, result and output, common and OP specific indicators (Art.87.2 of the CPR) are made public in an easily accessible way (preferably on internet), including the name and definition of the indicators, their baseline and target values (if they have them), and cumulative achievement values for each year.
- Effective system of result indicators: existence of result indicators that measure the change sought by policy action in line with Art.24.3 and Art.87.2 of the CPR, meeting the quality criteria listed below.
- Robustness: the indicator is not unduly influenced by extreme values, which means the indicator reflects the intended change and is not sensitive to a high variation of values for a limited number of entities / participants. In technical terms, it means that the (probability) distribution of the indicator values is similar to the (probability) distribution of the individual values in the statistical sample / population.
- Clarity of normative interpretation: the evolution of the result indicator and the trend from baseline to target can be unambiguously interpreted.
- Responsiveness to policy: the value of the result indicator is duly influenced by the operation of (or outputs produced by) the OP.

3. Source of information for assessment

Documentation provided by Member States, including the operational programmes, the *ex ante* evaluation and other documents on statistical system and result indicators.

4. Rationale for the *ex ante* conditionality

Programming documents may contain good indicator and evaluation systems, but without underlying statistics, data collection methods and an evaluation, it is unlikely that meaningful information is produced.

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

Criteria for fulfilment	Criteria fulfilled?	
	YES / NO	Elements of non-fulfilment
<p><i>Arrangements for timely collection and aggregation of statistical data with the following elements is in place:</i></p> <ul style="list-style-type: none"> ▪ All operational programmes contain a description of the monitoring system in place to follow their implementation: <ul style="list-style-type: none"> ○ It precises which body is responsible for collecting statistical data for each indicator; ○ It indicates what are the available resources for the responsible body to carry out its tasks; ○ It mentions the appropriate collection and storing arrangements, as well as the deadlines for collecting these data. 		
<p>– <i>the identification of sources and mechanisms to ensure statistical validation:</i></p> <ul style="list-style-type: none"> ▪ For each indicator, the following elements are in place: <ul style="list-style-type: none"> ○ Data source: we already know from where/which institution/which entity the data will be collected for each indicator; ○ Data content: data which will be collected has been defined; ○ Data storage: the format and the location where the data will be kept have been identified and arrangements have been made to prevent data corruption or loss; ○ Data processing has been defined (aggregation, calculation methodology, etc.); ○ The Member State has already defined how data will be transferred before their submission to the Commission (through SFC2014) and has made sure that the subsystems are compatible. ○ There are provisions in place to respect data protection rules. ○ Statistical validation mechanism: For data collected by managing authority, there is evidence that the information is either collected on all entities / participants or on a representative sample (provided that the main parameters of the sample are included in the description). <p>NB: Data coming from officially verified source (e.g. national statistical service, national tax authority, public employment services) are regarded as meeting this criterion.</p>		

<ul style="list-style-type: none"> – <i>arrangements for publication and public availability of aggregated data</i> <ul style="list-style-type: none"> ▪ Information on indicators and aggregated data is available to the public (e.g. websites, etc.) 		
<ul style="list-style-type: none"> – <i>an effective system of results indicators including:</i> <ul style="list-style-type: none"> ▪ Result indicators have been provided for all programmes and respect the following requirements : <ul style="list-style-type: none"> – <i>the selection of result indicators for each programme providing information on what motivates the selection of policy actions financed by the programme</i> <ul style="list-style-type: none"> ○ The selection of result indicators is justified in relation to policy actions financed by the programme; ○ It is based on what motivates the selection of policy actions financed by the programme; ○ A description of this procedure is available, e.g. within the <i>ex ante</i> evaluation of the operational programme (submitted along with the OP). – <i>the establishment of targets for these indicators</i> <ul style="list-style-type: none"> ○ Qualitative or quantitative targets have been identified for each result indicator; ○ These targets are easily understandable, unambiguously measurable, reflect a broad consensus of stakeholders and are consistent in their approach (i.e. all measures are working towards the same direction). – <i>the respect for each indicator of the following requisites: robustness and statistical validation, clarity of normative interpretation, responsiveness to policy, timely collection of data</i> <ul style="list-style-type: none"> ▪ Each indicator respect the following criteria: <ul style="list-style-type: none"> ○ They are robust: the indicator is not unduly influenced by extreme values, which means that the indicator reflects the intended change and is not sensitive to a high variation of values for a limited number of entities/participants; ○ They are based on a statistical validation: they are based on information collected on all entities/participants concerned by the interventions (statistical population) or on a representative sample of the statistical population; ○ Clarity of normative interpretation: the evolution of result indicator and the trend from baseline to target can be unambiguously interpreted. ○ Responsiveness to policy: the value of each result indicator is duly influenced by the operation of (or outputs produced by) the OP; ○ Timely collection and aggregation of data: the data needs to be collected respecting a 		

<p>timeframe that allows meeting reporting obligations (normally along with the annual reporting cycle).</p> <ul style="list-style-type: none"> - <i>procedures in place to ensure that all operations financed by the programme adopt an effective system of indicators</i> ▪ There is a description of how data necessary to evaluate the contribution of the operations to the specific objectives will be collected and made available on time. ▪ There are special arrangements made to collect data needed to carry out impact evaluation (e.g. data on non-participants). 		
---	--	--

DRAFT

Annex: BACKGROUND INFORMATION

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

Obligations derive from the Regulations governing the operation of European Structural and Investments Funds related to result indicators.

2. Extracts of relevant documents

3. Further reading