

## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) No 223/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 11 March 2014****on the Fund for European Aid to the Most Deprived**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 175(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

(1) In line with the conclusions of the European Council of 17 June 2010, whereby the Union strategy for smart, sustainable and inclusive growth ('Europe 2020 strategy') was adopted, the Union and the Member States have set themselves the objective of having at least 20 million fewer people at risk of poverty and social exclusion by 2020. Nonetheless, in 2011, nearly one quarter of people living in the Union (119,82 million) were at risk of poverty or social exclusion, approximately 4 million people more than in the previous year. However,

poverty and social exclusion are not uniform across the Union and their gravity varies between the Member States.

(2) The number of persons suffering from material, or even severe material, deprivation in the Union is increasing and in 2011 nearly 8,8 % of Union citizens lived in conditions of severe material deprivation. In addition, those persons are often too excluded to benefit from the activation measures of Regulation (EU) No 1303/2013 of the European Parliament and of the Council <sup>(4)</sup>, and, in particular of Regulation (EU) No 1304/2013 of the European Parliament and of the Council <sup>(5)</sup>.

(3) Member States and the Commission should take appropriate steps to prevent any discrimination and should ensure equality between men and women and the coherent integration of the gender perspective at all stages of the preparation, the programming, management and implementation, the monitoring and the evaluation of the a Fund for European Aid to the Most Deprived (the 'Fund'), as well as in information and awareness raising campaigns and the exchange of best practices.

(4) Article 2 of the Treaty on European Union (TEU) emphasises that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

<sup>(1)</sup> OJ C 133, 9.5.2013, p. 62

<sup>(2)</sup> OJ C 139, 17.5.2013, p. 59.

<sup>(3)</sup> Position of the European Parliament of 25 February 2014 (not yet published in the Official Journal) and decision of the Council of 10 March 2014.

<sup>(4)</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

<sup>(5)</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470).

- (5) Article 6 TEU emphasises that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union.
- (6) Article 174 of the Treaty on the Functioning of the European Union (TFEU) provides that in order to promote its overall harmonious development, the Union is to develop and pursue actions leading to the strengthening of its economic, social and territorial cohesion.
- (7) The Fund should strengthen social cohesion by contributing to the reduction of poverty, and ultimately the eradication of the worst forms of poverty, in the Union by supporting national schemes that provide non-financial assistance to alleviate food and severe material deprivation and/or contribute to the social inclusion of the most deprived persons. The Fund should alleviate the forms of extreme poverty with the greatest social exclusion impact, such as homelessness, child poverty and food deprivation.
- (8) The Fund is not meant to replace public policies undertaken by the Member States to fight poverty and social exclusion, in particular policies which are necessary to prevent the marginalisation of vulnerable and low-income groups and to avert the increased risk of poverty and social exclusion.
- (9) Under Article 317 TFEU, and in the context of shared management, the conditions allowing the Commission to exercise its responsibilities for implementation of the general budget of the Union should be specified and the responsibilities in terms of cooperation by the Member States clarified. Those conditions should enable the Commission to obtain assurance that Member States are using the Fund in a legal and regular manner and in accordance with the principle of sound financial management within the meaning of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>(1)</sup> ('the Financial Regulation').
- (10) Those provisions also ensure that the operations supported shall comply with applicable Union and related national law which directly or indirectly implements this Regulation, as well as policies, in particular as regards the safety of food and/or basic material assistance distributed to the most deprived persons.
- (11) The allocation of the appropriations of the Fund between the Member States for the 2014-2020 period takes into account in equal measure the following indicators assessed on the basis of data from Eurostat on the population suffering from severe material deprivation and the population living in households with very low work intensity. Furthermore, the allocation also takes into account the different ways of assisting the most deprived persons in the Member States. However, each Member State should be allocated the minimum amount of 3 500 000 EUR for the 2014-2020 programming period in order to set an operational programme with a meaningful level of resources.
- (12) The Member State's allocation for the Fund should be deducted from the Member State Structural Funds allocation.
- (13) The operational programmes of Member States should identify and justify the forms of food and/or material deprivation to be addressed and/or social inclusion activities to be supported, and should describe features of the assistance to the most deprived persons that will be provided through the Fund's support for national schemes. It should also include elements necessary to ensure the effective and efficient implementation of the operational programmes.
- (14) Severe food deprivation in the Union coincides with significant food wastage. In this respect, the Fund should facilitate food donations, where appropriate. However, this is without prejudging the need to remove existing obstacles in order to encourage donations of excess food for the purposes of combating food deprivation.
- (15) With a view to ensuring the effective and efficient implementation of the measures financed from the Fund, Member States should, where appropriate, promote cooperation between regional and local authorities and bodies representing civil society and the participation by all those involved in drawing up and implementing activities financed from the Fund.
- (16) In order to maximise the effectiveness of the Fund, in particular as regards possible changes in the national circumstances, it is appropriate to establish a procedure to amend an operational programme.
- (17) The partnership principle should apply in order to respond in the most effective and adequate manner to the various needs and to better reach out to the most deprived persons.

<sup>(1)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

- (18) Exchanges of experience and best practices have a significant added value because they facilitate mutual learning. The Commission should facilitate and promote their dissemination, while seeking synergies with the exchange of best practices in the context of related Funds, in particular the European Social Fund (ESF).
- (19) In order to monitor the progress of implementation of operational programmes, Member States should draw up and provide to the Commission annual and final implementation reports. This should ensure the availability of essential and up-to-date information for those operational programmes. For the same purposes, the Commission and each Member State should meet every year to carry out a review, unless they agree otherwise. Relevant stakeholders should be involved in the monitoring in an appropriate way.
- (20) In order to improve the quality and design of each operational programme and evaluate the effectiveness and efficiency of the Fund, ex ante and ex post evaluations should be carried out. Those evaluations should be based upon relevant data and supplemented, where relevant, by surveys on the most deprived persons who have benefited from the operational programme and, if necessary, by evaluations during the programming period. Those evaluations should also respect the privacy of end recipients and be carried out in such a way as not to stigmatise the most deprived persons. The responsibilities of Member States and the Commission in this respect should be specified.
- (21) In evaluating the Fund and in developing the evaluation methodology it should be borne in mind that deprivation is a complex concept of a multi-dimensional nature.
- (22) Citizens have the right to know how the Union's financial resources are invested and to what effect. For the purpose of ensuring wide dissemination of information about the achievements of the Fund and to ensure accessibility and transparency of funding opportunities, detailed rules about information and communication, especially in relation to the responsibilities of the beneficiaries, the Member States and, where relevant, local and regional authorities should be established.
- (23) Union law concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data, in particular Directive 95/46/EC of the European Parliament and of the Council<sup>(1)</sup> is applicable.
- (24) It is necessary to establish a maximum level of co-financing from the Fund to the operational programmes to provide for a multiplier effect of Union resources. In addition the situation of Member States facing temporary budget difficulties should be addressed.
- (25) Uniform, simple and equitable rules on the eligibility period, operations and expenditures for the Fund should be applied across the Union. The conditions of eligibility should reflect the specific nature of the Fund's objectives and target populations, in particular through adequate and simplified conditions of eligibility of the operations as well as forms of support and rules and conditions of reimbursement.
- (26) Taking into account the date by which invitations to tender have to be issued, the time limits for adoption of this Regulation and the time needed for the preparation of operational programmes, rules should be put in place to permit a smooth transition so that there is no interruption in the supply of food aid. To this end, it is appropriate to allow eligibility of expenditure from 1 December 2013.
- (27) Regulation (EU) No 1308/2013 of the European Parliament and of the Council<sup>(2)</sup> provides that products bought under public intervention may be disposed of by making them available for the scheme for food distribution to the most deprived in the Union if that scheme so provides. Given that, depending on the circumstances, obtaining food from the use, processing or sale of those products is the most economically favourable option, it is appropriate to provide for such a possibility in this Regulation. The amounts derived from a transaction concerning such products should be used for the benefit of the most deprived persons. Those amounts should not be applied so as to diminish the obligation of the Member States to co-finance the programme. To ensure the most efficient possible use of those products and their proceeds, the Commission should adopt implementing acts in accordance with Regulation (EU) No 1308/2013 establishing procedures by which those products may be used, processed or sold for the purposes of the most deprived persons programme.
- (28) It is necessary to specify the types of actions that can be undertaken at the initiative of the Commission and of the Member States as technical assistance supported by the Fund. The Commission should consult the Member States and representatives of partner organisations at Union level for this purpose.

<sup>(1)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>(2)</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

- (29) In accordance with the principle of shared management, Member States and the Commission should be responsible for the management and control of programmes. Member States should have the primary responsibility, through their management and control system, for the implementation and control of their operational programme.
- (30) Member States should adopt adequate measures to guarantee the proper set up and functioning of their management and control systems to give assurance on the legal and regular use of the Fund. The obligations of Member States as regards the management and control systems of their operational programmes, and in relation to the prevention, detection and correction of irregularities and breaches of Union law should therefore be specified.
- (31) Member States should fulfil the management, control and audit obligations and assume the responsibilities as laid down in the rules on shared management set out in this Regulation and in the Financial Regulation. Member States should ensure that, in accordance with the conditions set out in this Regulation, effective arrangements for the examination of complaints in relation to the Fund are in place. In accordance with the principle of subsidiarity, Member States should, upon request of the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements and should inform the Commission of the results of examinations upon request.
- (32) Member States should designate a managing authority, a certifying authority and a functionally independent auditing authority for each operational programme. To provide flexibility for Member States in setting up control systems, it is appropriate to provide for the option for the functions of the certifying authority to be carried out by the managing authority. Member States should also be allowed to designate intermediate bodies to carry out certain tasks of the managing authority or the certifying authority. Member States should in that case lay down clearly their respective responsibilities and functions.
- (33) The managing authority bears the main responsibility for the effective and efficient implementation of the Fund and thus fulfils a substantial number of functions related to operational programme management and monitoring, financial management and controls as well as project selection. Accordingly, the managing authority's responsibilities and functions should be set out in this Regulation.
- (34) The certifying authority should draw up and submit to the Commission payment applications. It should draw up the accounts, certifying their completeness, accuracy and veracity and that the expenditure entered in the accounts complies with applicable Union and national rules. The certifying authority's responsibilities and functions should be set out in this Regulation.
- (35) The audit authority should ensure that audits are carried out on the management and control systems, on an appropriate sample of operations and on the accounts. The audit authority's responsibilities and functions should be set out in this Regulation. Audits of declared expenditure should be carried out on a representative sample of operations in order to enable the results to be extrapolated. As a general rule, a statistical sampling method should be used in order to provide a reliable representative sample. Nevertheless, audit authorities should be able to use in duly justified circumstances a non-statistical sampling method or substantive testing, provided that the conditions laid down in this Regulation are complied with.
- (36) In order to take account of the specific organisation of the management and control systems for the Fund and the need to ensure a proportionate approach, specific provisions should be laid down in relation to the designation of the managing authority and the certifying authority. In order to avoid an unnecessary administrative burden, the ex ante verification of compliance with the designation criteria indicated in this Regulation should be limited to the managing and certifying authority. There should be no requirement to approve the designation by the Commission. The monitoring of compliance with the designation criteria carried out on the basis of audit and control arrangements should, where results show non-compliance with the criteria, give rise to remedial actions, and possibly to the ending of the designation.
- (37) Without prejudice to the Commission's powers as regards financial control, cooperation between the Member States and the Commission in the framework of this Regulation should be ensured and criteria should be established which allow the Commission to determine, in the context of its strategy of control of national systems, the level of assurance it should obtain from national audit bodies.
- (38) The powers and responsibilities of the Commission with regard to verifying the effective functioning of the management and control systems, and to require Member State action, should be laid down. The Commission should also have the power to carry out on-the-spot audits focused on issues relating to sound financial management in order to draw conclusions on the performance of the Fund.
- (39) Budget commitments of the Union should be effected annually. In order to ensure effective programme management, it is necessary to lay down simple rules for pre-financing, interim requests for payment and the final balance.

- (40) With a view to ensuring reasonable assurance for the Commission prior to the acceptance of accounts, applications for interim payment should be reimbursed at a rate of 90 % of the amount resulting from applying the co-financing rate laid down in the decision adopting the operational programme, to the eligible expenditure. The outstanding amounts due should be paid to the Member States upon acceptance of accounts, provided that the Commission is able to conclude that the accounts are complete, accurate and true.
- (41) A pre-financing payment at the start of the operational programme should ensure that the Member State has the means to provide support to the beneficiaries in the implementation of the operations starting from the adoption of the operational programme. This pre-financing should be used exclusively for this purpose and so that beneficiaries should receive enough funding to start up an operation upon its selection.
- (42) Beneficiaries should receive the support in full no later than 90 days from the date of submission of the payment claim by the beneficiary, subject to the availability of funding from pre-financing and interim payments. The managing authority should be able to interrupt the deadline where supporting documents are incomplete or there is evidence of irregularity requiring further investigation.
- (43) In order to safeguard the Union's financial interests, measures should be provided for that are limited in time that allow the authorising officer by delegation to interrupt payments where there is clear evidence to suggest a significant deficiency in the functioning of the management and control system, evidence of irregularities linked to a request for payment, or a failure to submit documents for the purpose of the examination and acceptance of accounts. The duration of the interruption period should be for a period of up to six months, with a possible extension of that period up to nine months with the agreement of the Member State, to allow sufficient time to resolve the causes of the interruption thereby avoiding the application of suspensions.
- (44) In order to safeguard the Union's financial interests and provide the means to ensure effective programme implementation, provisions should be laid down allowing for the suspension by the Commission of payments.
- (45) In order to apply the requirements of the Financial Regulation to the financial management of the Fund, it is necessary to set out simple procedures for the preparation, examination and acceptance of accounts which should ensure a clear basis and legal certainty for these arrangements. In addition, in order to allow a Member State properly to fulfil its responsibilities, it should be possible for the Member State to exclude amounts which are the subject of an ongoing assessment of legality and regularity.
- (46) To reduce the risk of irregular expenditure being declared, it should be possible for a certifying authority, without any need for additional justification, to include the amounts which require further verification in an interim payment application after the accounting year in which they were entered into its accounting system.
- (47) In order to reduce the administrative burden on beneficiaries, specific time limits should be set out during which the managing authorities are obliged to ensure the availability of documents for operations following submission of expenditure or completion of an operation. In accordance with the principle of proportionality, the period for keeping the documents should be differentiated depending on the total eligible expenditure of an operation.
- (48) As accounts are verified and accepted every year, the closure procedure should be simple. The final closure of the programme should therefore be based only on the documents relating to the final accounting year and the final implementation report or the last annual implementation report, without any need to provide any additional documents.
- (49) In order to safeguard the budget of the Union, it is possible that it would be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of the applicable Union law or national law related to its application can lead to financial corrections by the Commission. In order to ensure that any financial corrections which the Commission imposes on Member States are related to the protection of the Union's financial interests, such corrections should be confined to cases where the breach of applicable Union law or national law related to applying relevant Union law concerns the eligibility, regularity, management or control of operations and the corresponding expenditure declared to the Commission. To ensure proportionality it is important that the Commission considers the nature and the gravity of the breach and the related financial implications for the budget of the Union when deciding on a financial correction.
- (50) It is necessary to establish a legal framework which provides robust management and control systems and an appropriate division of roles and responsibilities in the context of shared management. The role of the Commission should therefore be specified and clarified and proportionate rules set out for the application of financial corrections by the Commission.

- (51) The frequency of audits on operations should be proportionate to the extent of the Union's support from the Fund. In particular, the number of audits carried out should be reduced where the total eligible expenditure for an operation does not exceed EUR 150 000. Nevertheless, it should be possible to carry out audits at any time where there is evidence of an irregularity or fraud, or following closure of a completed operation, as part of an audit sample. The Commission should be able to review the audit trail of the audit authority or take part in on-the-spot audits of the audit authority. Where the Commission does not obtain the necessary assurance as to the effective functioning of the audit authority by those means, the Commission should be able to carry out a re-performance of the audit activity where this is in accordance with internationally accepted audit standards. In order that the level of auditing by the Commission is proportionate to the risk, the Commission should be able to reduce its audit work in relation to operational programmes where there are no significant deficiencies or where the audit authority can be relied on. In order to reduce the administrative burden on beneficiaries, specific rules should be introduced to reduce the risk of overlap between audits of the same operations by various institutions, namely the European Court of Auditors, the Commission and the audit authority. In addition, the scope of audits should take fully into account the objective and the features of the target populations of the Fund, as well as the voluntary character of many beneficiaries.
- (52) In order to ensure financial discipline, it is appropriate to define the arrangements for de-commitment of any part of the budget commitment in an operational programme, in particular where an amount may be excluded from de-commitment, in particular where delays in implementation result from circumstances which are independent of the party concerned, abnormal or unforeseeable and whose consequences cannot be avoided despite the diligence shown, as well as in a situation in which a request for payment has been made but for which the payment deadline has been interrupted or the payment suspended.
- (53) In order to supplement and amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the content of the annual and final implementation reports, including the list of common indicators, the criteria for determining the cases of irregularity to be reported, the data to be provided and the recovery of sums unduly paid, the rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring systems established by managing authorities, the minimum requirements for audit trails, the scope and content of national audits and methodology for sampling, the detailed rules on the use of data collected during audits, and the criteria for determining serious deficiencies in the effective functioning of management and control systems, for establishing the level of financial correction to be applied and for applying flat-rates or extrapolated financial corrections. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (54) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council
- (55) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards decisions on annual plans of actions to be financed from technical assistance at the initiative of the Commission, adopting and amending operational programmes, decisions suspending interim payments, decisions on the non-acceptance of the accounts and the amount chargeable, if the accounts were not accepted, decisions on financial corrections decisions setting out the annual breakdown of the commitment appropriations to the Member States, and, in the case of decommitment, decisions to amend decisions adopting programmes.
- (56) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the template for the structured survey on end recipients, the frequency of reporting of irregularities and the reporting format to be used, the terms and conditions for the electronic data exchange system for management and control, the technical specifications of recording and data-storing in relation to the management and control system, the model for the management declaration, the models for the audit strategy, audit opinion and control report, the model for the report and opinion of the independent audit body and description of the functions and procedures in place for the management authority and, where appropriate, the certifying authority, the model for payment applications, and the model for accounts. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup>.
- (57) For certain implementing acts to be adopted in accordance with the examination procedure laid down in Article 5 of Regulation (EU) No 182/2011 the potential impact and implications are of such a high significance to Member States that an exception from the general rule is justified. Accordingly, where no opinion is delivered by the committee, the Commission
- <sup>(1)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

should not adopt the draft implementing act. Those implementing acts relate to laying down technical specifications of recording and data storing in relation to the management and control system. The third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 should therefore apply to those implementing acts.

- (58) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including respect for human dignity and for private and family life, the right to the protection of personal data, the rights of the child, the rights of the elderly, equality between men and women, and the prohibition of discrimination. This Regulation should be applied according to those rights and principles.
- (59) Since the objectives of this Regulation, namely to improve social cohesion in the Union and contribute to the fight against poverty and social exclusion, cannot be sufficiently achieved by Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (60) It should be ensured that the Fund complements actions that are funded under the ESF as social inclusion activities, while exclusively supporting the most deprived persons.
- (61) In order to allow for the prompt adoption of the delegated acts provided for in this Regulation, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

#### TITLE I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter and purpose

This Regulation establishes the Fund for European Aid to the Most Deprived ('the Fund') for the period from 1 January 2014 to 31 December 2020 and determines the objectives of the Fund, the scope of its support, the financial resources available and their allocation for each Member State, and lays down the rules necessary to ensure the effectiveness and efficiency of the Fund.

#### Article 2

### Definitions

The following definitions apply:

- (1) 'basic material assistance' means basic consumer goods of a limited value and for the personal use of the most deprived persons for example clothing, footwear, hygiene goods, school material and sleeping bags;
- (2) 'most deprived persons' means natural persons, whether individuals, families, households or groups composed of such persons, whose need for assistance has been established according to the objective criteria set by the national competent authorities in consultation with relevant stakeholders, while avoiding conflicts of interest, or defined by the partner organisations and which are approved by those national competent authorities and which may include elements that allow the targeting of the most deprived persons in certain geographical areas;
- (3) 'partner organisations' means public bodies and/or non-profit organisations that deliver food and/or basic material assistance, where applicable, combined with accompanying measures directly or through other partner organisations, or that undertake activities aiming directly at the social inclusion of the most deprived persons, and whose operations have been selected by the managing authority in accordance with point (b) of Article 32(3);
- (4) 'national schemes' means any scheme having, at least partly, the same objectives as the Fund and which is being implemented at national, regional or local level by public bodies or non-profit organisations;
- (5) 'food and/or basic material assistance operational programme' (also referred to as 'OP I') means an operational programme supporting the distribution of food and/or basic material assistance to the most deprived persons, combined where applicable with accompanying measures, aimed at alleviating the social exclusion of most deprived persons;
- (6) 'social inclusion of the most deprived persons operational programme' (also referred to as 'OP II') means an operational programme supporting the activities outside active labour market measures, consisting in non-financial, non-material assistance, aimed at the social inclusion of the most deprived persons;
- (7) 'operation' means a project, contract or action selected by the managing authority of the operational programme concerned, or under its responsibility, contributing to the objectives of the operational programme to which it relates;

- (8) 'completed operation' means an operation that has been physically completed or fully implemented and in respect of which all related payments have been made by beneficiaries and the support from the corresponding operational programme has been paid to the beneficiaries;
- (9) 'beneficiary' means a public or private body responsible for initiating or initiating and implementing operations;
- (10) 'end recipient' means the most deprived person or persons receiving support as defined in Article 4 of this Regulation;
- (11) 'accompanying measures' means activities provided in addition to the distribution of food and/or basic material assistance with the aim of alleviating social exclusion and/or tackling social emergencies in a more empowering and sustainable way, for example guidance on a balanced diet and budget management advice;
- (12) 'public expenditure' means a public contribution to the financing of operations the source of which is the budget of national, regional or local public authorities, the budget of the Union related to the Fund, the budget of public law bodies or the budget of associations of public authorities or any body governed by public law within the meaning of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council <sup>(1)</sup>;
- (13) 'intermediate body' means any public or private body which acts under the responsibility of a managing or certifying authority, or which carries out duties on behalf of such an authority in relation to beneficiaries' implementing operations;
- (14) 'accounting year', means the period from 1 July to 30 June, except for the first accounting year of the programming period, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2015. The final accounting year shall be from 1 July 2023 to 30 June 2024;
- (15) 'financial year' means the period from 1 January to 31 December;
- (16) 'irregularity' means any breach of Union law or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the Fund, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (17) 'economic operator' means any natural or legal person or other entity taking part in the implementation of assistance from the Fund, with the exception of a Member State exercising its prerogatives as a public authority;
- (18) 'systemic irregularity' means any irregularity, that may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this Regulation;
- (19) 'serious deficiency in the effective functioning of a management and control system' means a deficiency for which substantial improvements in the system are required, which exposes the Fund to significant risk of irregularities, and the existence of which is incompatible with an unqualified audit opinion on the functioning of the management and control system.

### Article 3

#### Objectives

1. The Fund shall promote social cohesion, enhance social inclusion and therefore ultimately contribute to the objective of eradicating poverty in the Union by contributing to achieving the poverty reduction target of at least 20 million of the number of persons at risk of poverty and social exclusion in accordance with the Europe 2020 strategy, whilst complementing the Structural Funds. The Fund shall contribute to achieving the specific objective of alleviating the worst forms of poverty, by providing non-financial assistance to the most deprived persons by food and/or basic material assistance, and social inclusion activities aiming at the social integration of the most deprived persons.

This objective and the results of the implementation of the Fund shall be qualitatively and quantitatively assessed.

2. The Fund shall complement sustainable national poverty eradication and social inclusion policies, which remain the responsibility of Member States.

### Article 4

#### Scope of support

1. The Fund shall support national schemes whereby food and/or basic material assistance, are distributed to the most deprived persons through partner organisations selected by Member States.

<sup>(1)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of the procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

With the view to augmenting and diversifying the supply of food for the most deprived persons, as well as reducing and preventing food wastage, the Fund may support activities related to the collection, transport, storage and distribution of food donations.

The Fund may also support accompanying measures, complementing the provision of food and/or basic material assistance.

2. The Fund shall support activities contributing to the social inclusion of the most deprived persons.

3. The Fund shall promote, at Union level, mutual learning, networking and dissemination of good practices in the area of non-financial assistance to the most deprived persons.

#### Article 5

#### Principles

1. The part of the budget of the Union allocated to the Fund shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with point (b) of Article 58(1) of the Financial Regulation, with the exception of technical assistance at the initiative of the Commission, which shall be implemented in the framework of direct management in accordance with point (a) of Article 58(1) of the Financial Regulation.

2. The Commission and the Member States shall ensure, taking account of the specific context of each Member State, that support from the Fund is consistent with the relevant policies and priorities of the Union and complementary to other instruments of the Union.

3. Support from the Fund shall be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.

4. Member States and the bodies designated by them for that purpose, shall be responsible for implementing the operational programmes and carrying out their tasks under this Regulation in accordance with the institutional, legal and financial framework of the Member State and subject to compliance with this Regulation.

5. Arrangements for the implementation and use of the Fund, and in particular the financial and administrative resources required in relation to reporting, evaluation, management and control shall take into account the principle of proportionality having regard to the level of support

allocated and the limited administrative capacity of the organisations that function thanks mainly to volunteers.

6. In accordance with their respective responsibilities, and to prevent double funding, the Commission and the Member States shall ensure coordination with the ESF, and with other relevant Union policies, strategies and instruments, in particular Union initiatives in the field of public health and against food waste.

7. The Commission and the Member States and the beneficiaries shall apply the principle of sound financial management in accordance with Article 30 of the Financial Regulation.

8. The Commission and the Member States shall ensure the effectiveness of the Fund, in particular through monitoring, reporting and evaluation.

9. The Member States and the Commission shall ensure that the operational programmes are prepared, programmed, implemented, monitored and evaluated, respecting the partnership principle, when carrying out the consultations of relevant stakeholders as set out in this Regulation.

10. The Commission and the Member States shall take action to ensure the effectiveness of the Fund, and shall carry out their respective roles in relation to the Fund with the aim of reducing the administrative burden for beneficiaries.

11. The Commission and the Member States shall ensure that equality between men and women and the integration of the gender perspective are taken into account and promoted during the various stages of the preparation, programming, management and implementation, monitoring and evaluation of the Fund, as well as in information and awareness raising campaigns and exchanges of best practices. The Commission and the Member States shall use data broken down by gender, where available.

The Commission and the Member States shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in obtaining access to the Fund, and to programmes and operations supported by the Fund.

12. Operations supported by the Fund shall comply with applicable Union law and national law relating to its application ('applicable law'). In particular, the Fund may only be used to support the distribution of food or goods that are in conformity with the Union law on consumer product safety.

13. Member States and beneficiaries shall choose the food and/or the basic material assistance on the basis of objective criteria related to the needs of the most deprived persons. The selection criteria for the food products, and where appropriate for goods, shall also take into consideration climatic and environmental aspects, in particular with a view to reduction of food waste. Where appropriate, the choice of the type of food products to be distributed shall be made having considered their contribution to the balanced diet of the most deprived persons.

14. The Commission and the Member States shall ensure that aid provided in the framework of this Fund respects the dignity of the most deprived persons.

## TITLE II

### RESOURCES AND PROGRAMMING

#### Article 6

##### Global resources

1. The resources for the Fund available for budgetary commitment for the period 2014 - 2020 shall be EUR 3 395 684 880 in 2011 prices, in accordance with the annual breakdown set out in Annex II.

2. The allocation of the Fund for the period 2014–2020 for every Member State is set out in Annex III. The minimum amount for each Member State is EUR 3 500 000 for the whole period.

3. For the purpose of programming and subsequent inclusion in the general budget of the Union, the amount of resources shall be indexed at 2 % per year.

4. 0,35 % of the global resources shall be allocated to technical assistance at the initiative of the Commission.

#### Article 7

##### Operational programmes

1. Each Member State shall submit to the Commission, within six months of the entry into force of this Regulation, an OP I and/or an OP II, covering the period from 1 January 2014 to 31 December 2020.

2. An OP I shall set out:

(a) an identification of and a justification for selecting the type or types of material deprivation to be addressed under the operational programme and, for each type of material deprivation addressed, a description of the main characteristics of the distribution of food and/or basic material assistance and, where appropriate, of the accompanying measures to be provided, having regard to the results of the ex ante evaluation carried out in accordance with Article 16;

(b) a description of the corresponding national scheme or schemes for each type of material deprivation addressed;

(c) a description of the mechanism setting the eligibility criteria for the most deprived persons, differentiated where necessary by type of material deprivation addressed;

(d) the criteria for the selection of operations and a description of the selection mechanism differentiated where necessary by type of material deprivation addressed;

(e) the criteria for the selection of the partner organisations differentiated where necessary by type of material deprivation addressed;

(f) a description of the mechanism used to ensure complementarity with the ESF;

(g) a financing plan containing a table specifying, for the whole programming period, the amount of the total financial appropriation in respect of support from the operational programme, indicatively broken down by type of material deprivation addressed as well as the corresponding accompanying measures.

3. An OP II shall set out:

(a) a strategy for the programme contribution to the promotion of social cohesion and poverty reduction in accordance with the Europe 2020 strategy, including a justification for the choice of assistance priority;

(b) the specific objectives of the operational programme based on an identification of national needs, having regard to the results of the ex ante evaluation carried out in accordance with Article 16. The ex ante evaluation shall be submitted to the Commission at the same time as the operational programme;

(c) a financing plan containing a table specifying, for the whole programming period, the amount of the total financial appropriation in respect of support from the operational programme, indicatively broken down by type of action;

(d) the identification of the most deprived persons to be targeted;

(e) the financial indicators relating to the corresponding expenditure allocated;

- (f) the expected results for the specific objectives and the corresponding programme specific output and result indicators with a base line and target values;
- (g) a description of the type and examples of actions to be supported and their expected contribution to the specific objectives referred to in point (b) including the guiding principles for the selection of operations and, where appropriate, the identification of the types of beneficiaries;
- (h) a description of the mechanism to ensure complementarity with the ESF, as well as to prevent overlap and double-financing of operations.
4. In addition, each operational programme shall set out:
- (a) the identification of the managing authority, the certifying authority where applicable, the audit authority and the body to which payments are to be made by the Commission and a description of the monitoring procedure;
- (b) a description of the measures taken to involve all relevant stakeholders as well as, where appropriate, the competent regional, local and other public authorities in the preparation of the operational programme;
- (c) a description of the planned use of technical assistance in accordance with Article 27(4), including actions to reinforce the administrative capacity of the beneficiaries in relation to the implementation of the operational programme;
- (d) a financing plan containing a table specifying for each year in accordance with Article 20 the amount of the financial appropriation envisaged for support from the Fund and the co-financing in accordance with Article 20.

The partner organisations referred to in point (e) of Article 7(2) that deliver directly the food and/or basic material assistance shall themselves or in cooperation with other organisations undertake activities, where appropriate consisting of a re-orientation towards competent services, that complement the provision of material assistance, aiming at the social inclusion of the most deprived persons, whether or not these activities are supported by the Fund. However, such accompanying measures shall not be compulsory in cases where the food and/or basic material assistance is provided solely to most deprived children in childcare or comparable facilities.

5. Member States or any authority designated by them shall draw up operational programmes. They shall cooperate with all

relevant stakeholders as well as, where appropriate, the competent regional, local and other public authorities. Member States shall ensure that the operational programmes are closely linked to national social inclusion policies.

6. Member States shall draft their operational programmes in accordance with the templates set out in Annex I as appropriate.

#### Article 8

##### Adoption of operational programmes

1. The Commission shall assess the consistency of each operational programme with this Regulation and its contribution to the objectives of the Fund, taking into account the ex ante evaluation carried out in accordance with Article 16. The Commission shall ensure that there is no overlap with any operational programme financed by the ESF in the Member State.

2. The Commission may make observations within three months of the date of submission of the operational programme. The Member State shall provide to the Commission all necessary additional information and, where appropriate, revise the proposed operational programme.

3. Provided that any observations made by the Commission in accordance with paragraph 2 have been adequately taken into account, the Commission shall, by means of implementing acts, approve each operational programme no later than six months after its submission by the Member State.

#### Article 9

##### Amendment of operational programmes

1. A Member State may submit a request for amendment of an operational programme. The request shall be accompanied by the revised operational programme and the justification for the amendment.

2. The Commission shall assess the information provided in accordance with paragraph 1, taking account of the justification provided by the Member State. The Commission may make observations and the Member State shall provide to the Commission all necessary additional information.

3. The Commission shall, by means of implementing acts, approve the amendment of an operational programme no later than four months after its submission by the Member State provided that any observations made by the Commission have been adequately taken into account.

*Article 10***Exchange of good practices**

The Commission shall facilitate, including by means of a website, the exchange of experience, capacity building and networking, as well as dissemination of relevant outcomes in the area of non-financial assistance to the most deprived persons.

Relevant organisations that do not make use of the Fund may also be included.

In addition, the Commission shall consult, at least once a year, the organisations which represent the partner organisations at Union level on the implementation of support from the Fund and, following such consultation, shall report back to the European Parliament and to the Council in due course.

The Commission shall also facilitate the online dissemination of relevant outcomes, reports and information in relation to the Fund.

## TITLE III

**MONITORING AND EVALUATION, INFORMATION AND COMMUNICATION***Article 11***Monitoring committee for an OP II**

1. Within three months of the date of notification to the Member State of the decision adopting an OP II, the Member State shall set up or appoint a committee, in accordance with the institutional, legal and financial framework of the Member State concerned to monitor the implementation of the programme, in agreement with the managing authority.

2. Each monitoring committee shall draw up and adopt its rules of procedure in accordance with the institutional, legal and financial framework of the Member State concerned.

3. The composition of the monitoring committee shall be decided by the Member State, provided that the monitoring committee is composed of representatives of the relevant Member State authorities and intermediate bodies and of all relevant stakeholders as well as where appropriate of representatives of the competent regional, local and other public authorities. Representatives of the competent regional, local and other public authorities as well as of relevant stakeholders shall be delegated to be part of the monitoring committee by the respective organisation through transparent processes. Each member of the monitoring committee may have a voting right. The list of members of the monitoring committee shall be published.

4. The Commission shall participate in the work of the monitoring committee in an advisory capacity.

5. The monitoring committee shall be chaired by a representative of the Member State or of the managing authority.

*Article 12***Functions of the monitoring committee for an OP II**

1. The monitoring committee shall meet at least once a year and shall review implementation of the programme and progress made towards achieving its specific objectives. In doing so, it shall have regard to the financial data, common and programme -specific indicators, including changes in the value of result indicators and progress towards quantified target values, and, where relevant, the results of qualitative analyses.

2. The monitoring committee shall examine all issues that affect the performance of the programme. It shall examine in particular:

- (a) progress made towards achieving the specific targets of the operational programme on the basis of the documents submitted by the managing authority, including evaluation findings;
- (b) implementation of the information and communication actions;
- (c) actions, which take into account and promote equality between men and women, equal opportunities and non-discrimination.

3. The monitoring committee shall examine and approve:

- (a) the methodology and criteria for selection of operations in line with the guiding principles as set out in point (f) of Article 7(3);
- (b) the annual and final implementation reports;
- (c) any proposal by the managing authority for an amendment to the operational programme.

4. The monitoring committee may make observations to the managing authority regarding implementation of the programme and its evaluation.

It shall monitor actions taken as a result of its observations.

*Article 13***Implementation reports and indicators**

1. From 2015 to 2023, the Member States shall submit to the Commission, by 30 June of each year, an annual implementation report for the operational programme implemented in the previous financial year.

2. The Member States shall draft the annual implementation report in accordance with the delegated act referred to in paragraph 6, including the list of common indicators, and for the social inclusion operational programmes, of the programme specific indicators.

The Member States shall consult the relevant stakeholders, while avoiding conflicts of interest, on the implementation reports of OP I. A summary of the comments of those relevant stakeholders shall be annexed to the report.

3. The annual implementation reports shall be admissible where they contain all the information required in accordance with the delegated act referred to in paragraph 6. The Commission shall inform the Member State concerned within 15 working days from the date of receipt of the annual implementation report if it is not admissible. Where the Commission has not informed the Member State within the time limit, the report shall be deemed admissible.

4. The Commission shall examine the annual implementation report and inform the Member State of its observations within two months of the receipt of the annual implementation report.

Where the Commission does not provide observations to the Member State within this time limit, the reports shall be deemed to be accepted.

5. The Member State shall submit a final report on implementation of the operational programme by 30 September 2024.

The Member States shall draft the final implementation report in accordance with the delegated acts referred to in paragraph 6.

The Commission shall examine the final implementation report and inform the Member State of its observations within five months of receipt of the final report.

Where the Commission does not provide observations to the Member State within that time limit, the reports shall be deemed to have been accepted.

6. The Commission shall be empowered to adopt delegated acts, in accordance with Article 62, laying down the content of the annual and final implementation reports, including the list of common indicators, by 17 July 2014.

7. The Commission may address observations to a Member State concerning the implementation of the operational programme. The managing authority shall within three months inform the Commission of the corrective measures taken.

8. The managing authority shall make public a summary of the contents of each annual and final implementation report.

9. The Commission shall present a summary of the annual implementation reports and the final implementation reports to the European Parliament and to the Council in due course.

10. The procedure concerning implementation reports shall not be excessive in comparison to the resources allocated and to the nature of the support and shall not cause unnecessary administrative burdens.

*Article 14***Review meetings**

1. The Commission and the Member States shall meet every year from 2014 to 2023, unless otherwise agreed, to review the progress made in implementing the operational programme, taking account of the annual implementation report and the Commission's observations referred to in Article 13(7), where applicable.

2. The review meeting shall be chaired by the Commission. The relevant stakeholders shall be invited to participate in review meetings of OP I except for the parts of that meeting when their participation would lead to conflicts of interest or breach of confidentiality related to audit matters.

3. The Member State shall ensure that appropriate follow-up is given to any comments of the Commission following the review meeting and shall refer to that follow-up in the implementation report of the following financial year or, as appropriate, years.

*Article 15***General provisions on evaluation**

1. Member States shall provide the resources necessary for carrying out evaluations, and shall ensure that procedures are in place to produce and collect the data necessary for evaluations, including data related to the common indicators referred to in Article 13.

2. Evaluations shall be carried out by experts that are functionally independent of the authorities responsible for operational programme implementation. All evaluations shall be made public in their entirety but shall under no circumstances include information regarding the identity of end recipients.

3. The evaluations shall not be excessive in comparison to the resources allocated or to the nature of the support and shall not cause unnecessary administrative burdens.

#### Article 16

##### Ex ante evaluation

1. Member States shall carry out an ex ante evaluation of each operational programme.

2. Ex ante evaluation shall be carried out under the responsibility of the authority responsible for preparing the operational programme. It shall be submitted to the Commission at the same time as the operational programme, together with an executive summary.

3. Ex ante evaluations of OP I shall appraise the following elements:

- (a) the contribution to the Union objective of at least 20 million fewer people living in poverty or at risk of poverty and social exclusion by 2020, having regard to the selected type of material deprivation to be addressed and taking into account national circumstances in terms of poverty and social exclusion and material deprivation;
- (b) the internal coherence of the proposed operational programme and its relation with other relevant financial instruments;
- (c) the consistency of the allocation of budgetary resources with the objectives of the operational programme;
- (d) the contribution of the expected outputs to the results and thus to the objectives of the Fund;
- (e) the involvement of relevant stakeholders;
- (f) the suitability of the procedures for monitoring the operational programme and for collecting the data necessary to carry out evaluations.

4. Ex ante evaluations of OP II shall appraise the following elements:

- (a) the contribution to the promotion of social cohesion and poverty reduction in accordance with the Europe 2020 strategy, taking into account national needs;
- (b) the internal coherence of the proposed programme and its relation with other relevant instruments, in particular the ESF;
- (c) the consistency of the allocation of budgetary resources with the objectives of the programme;
- (d) the relevance and clarity of the proposed programme specific indicators;
- (e) how the expected outputs will contribute to results;
- (f) whether the quantified target values for indicators are realistic, having regard to the support from the Fund envisaged;
- (g) the rationale for the form of support proposed;
- (h) the adequacy of human resources and administrative capacity for management of the programme;
- (i) the suitability of the procedures for monitoring the programme and for collecting the data necessary to carry out evaluations;
- (j) the adequacy of planned measures to promote equal opportunities between men and women and to prevent any discrimination.

#### Article 17

##### Evaluation during the programming period

1. The Commission shall present a mid-term evaluation of the Fund to the European Parliament and to the Council by 31 December 2018.

2. The Commission may, at its own initiative, evaluate operational programmes.

3. During the programming period, the managing authority of an OP I may evaluate the effectiveness and efficiency of the operational programme.

4. The managing authority of an OP I shall carry out a structured survey on end recipients in 2017 and 2022, in accordance with the template adopted by the Commission. The Commission shall adopt implementing acts establishing the template after the consultation of relevant stakeholders. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 63(2).

5. The managing authority of an OP II shall carry out at least one evaluation before 31 December 2022. The evaluation shall assess the effectiveness, efficiency and impact of the operations supported. Appropriate follow up shall be ensured.

#### Article 18

##### Ex post evaluation

At its own initiative and in close cooperation with the Member States, the Commission shall carry out, with the assistance of external experts, an ex-post evaluation, to assess the effectiveness and efficiency of the Fund and the sustainability of results obtained, as well as to measure the added value of the Fund. This ex post evaluation shall be completed by 31 December 2024.

#### Article 19

##### Information and communication

1. The Commission and the Member States shall provide information on and promote the actions supported by the Fund. The information shall, in particular, be addressed to the most deprived persons, as well as to the wider public and the media. It shall highlight the role of the Union and ensure that the contribution from the Fund, the Member States and the partner organisations regarding the Union's social cohesion objectives is visible without stigmatising end recipients.

2. The managing authority shall, in order to ensure transparency in the support of the Fund, maintain a list of operations supported by the Fund in a spread sheet data format, which allows the data to be sorted, searched, extracted, compared and easily published on the internet. The list of operations shall include at least the following information:

- (a) the name and address of the beneficiary;
- (b) the allocated amount of Union funding;
- (c) for OP I, the type of material deprivation addressed.

The managing authority shall update the list of operations at least every twelve months.

3. During the implementation of an operation, the beneficiaries and partner organisations shall inform the public about the support obtained from the Fund by placing either at least one poster with information about the operation (minimum size A3), including about the financial support from Union or a Union emblem of reasonable size, at a location readily visible to the public. This requirement shall be fulfilled, without stigmatising end-recipients, at each place of delivery of OP I and/or OP II, unless this is not possible due to the circumstances of the distribution.

Beneficiaries and partner organisations which have websites shall also provide a short description of the operation on their website, including its aims and results, and highlighting the financial support from the Union.

4. All information and communication measures undertaken by the beneficiary and the partner organisations shall acknowledge support from the Fund to the operation by displaying the emblem of the Union together with a reference to the Union and the Fund.

5. The managing authority shall inform beneficiaries of publication of the list of operations in accordance with paragraph 2. The managing authority shall provide information and communication tools, including templates in electronic format, to help beneficiaries and partner organisations to meet their obligations as set out in paragraph 3.

6. In the case of OP II:

- (a) the Member State or the managing authority shall be responsible for organising:
  - (i) a main information activity to publicise the launch of the operational programme; and
  - (ii) at least one main information activity a year to promote the funding opportunities and the strategies pursued and/or present the achievements of the operational programme, including, where relevant, examples of operations;
- (b) during implementation of an operation, the beneficiary shall inform the public about the support obtained from the Fund by ensuring that those taking part in the operation have been informed of the support from the Fund;
- (c) any document, including any attendance or other certificate, concerning an operation shall include a statement to the effect that the operational programme was supported by the Fund;

(d) the managing authority shall ensure that potential beneficiaries have access to the relevant information on the funding opportunities, the launching of application calls and conditions thereof and the criteria for selecting the operations to be supported.

7. In processing personal data pursuant to Articles 15 to 19 of this Regulation, the managing authority as well as the beneficiaries and partner organisations shall comply with Directive 95/46/EC.

#### TITLE IV

#### FINANCIAL SUPPORT FROM THE FUND

##### Article 20

##### Co-financing

1. The co-financing rate at the level of the operational programme amounts up to 85 % of the eligible public expenditure. It may be increased in the cases described in Article 21(1). Member States shall be free to support the Fund's initiatives with additional national resources.

2. The Commission decision adopting an operational programme shall fix the co-financing rate applicable to the operational programme and the maximum amount of support from the Fund.

3. The technical assistance measures implemented at the initiative of, or on behalf of, the Commission may be financed at the rate of 100 %.

##### Article 21

##### Increase in payments for Member States with temporary budgetary difficulties

1. At the request of a Member State, interim payments and payments of the final balance may be increased by 10 percentage points above the co-financing rate applicable to the operational programme. The increased rate, which can not exceed 100 %, shall apply to requests for payment relating to the accounting period in which the Member State has submitted its request and subsequent accounting periods during which the Member State meets one of the following conditions:

(a) where the Member State concerned has adopted the euro, it receives macro-financial assistance from the Union in accordance with Council Regulation (EU) No 407/2010 <sup>(1)</sup>;

(b) where the Member State concerned has not adopted the euro, it receives medium-term financial assistance in accordance with Council Regulation (EC) No 332/2002 <sup>(2)</sup>;

(c) financial assistance is made available to it in accordance with the Treaty establishing the European Stability Mechanism.

2. Notwithstanding paragraph 1, Union support through interim payments and payments of the final balance shall not be higher than the public support and the maximum amount of support from the Fund, as laid down in the Commission decision approving the operational programme.

##### Article 22

##### Eligibility period

1. This Article shall be without prejudice to the rules on eligibility of technical assistance at the initiative of the Commission as set out in Article 27.

2. Expenditure shall be eligible for a support from an operational programme if it is incurred by a beneficiary and paid between 1 December 2013 and 31 December 2023.

3. Operations shall not be selected for support by an operational programme where they have been physically completed or fully implemented before the application for funding under the operational programme has been submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.

4. In the case of amendment of an operational programme, expenditure that becomes eligible because of the amendment to the operational programme shall only be eligible from the date of submission of the request for amendment by the Member State to the Commission.

##### Article 23

##### Eligibility of operations

1. Operations supported by an operational programme shall be located in the Member State covered by the operational programme.

2. Operations may receive support from an operational programme provided that they have been selected in accordance with a fair and transparent procedure and on the basis of either of the criteria laid down in the operational programme or approved by the monitoring committee as appropriate.

<sup>(1)</sup> Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

<sup>(2)</sup> Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

3. The selection criteria and lists of operations selected for support from an OP II shall be communicated upon adoption to the monitoring committees of the operational programmes co-financed by the ESF.

4. The food and/or basic material assistance for the most deprived persons may be purchased by the partner organisations themselves.

The food and/or basic material assistance for the most deprived persons may also be purchased by a public body and made available free of charge to the partner organisations. In that case, the food may be obtained from the use, processing or sale of the products disposed of in accordance with Article 16(2) of Regulation (EU) No 1308/2013, provided that this is economically the most favourable option and does not unduly delay the delivery of the food products to the partner organisations. Any amount derived from such a transaction shall be used for the benefit of the most deprived persons, and shall not be applied so as to diminish the obligation of the Member States, provided in Article 20 of this Regulation, to co-finance the programme.

The Commission shall apply the procedures adopted pursuant to point (i) of Article 20 of Regulation (EU) No 1308/2013 by which the products referred to therein may be used, processed or sold for the purposes of this Regulation, in order to ensure their maximum efficiency.

5. That food and/or basic material assistance shall be distributed free of charge to the most deprived persons.

6. An operation supported by the Fund shall not receive support from more than one operational programme co-financed by the Fund or from another Union instrument in order to avoid double funding.

#### Article 24

##### Forms of support

The Fund shall be used by Member States to provide support in the forms of grants, procurement or a combination thereof. However, that support shall not take the form of aid falling under Article 107(1) TFEU.

#### Article 25

##### Forms of grants

1. Grants may take the following forms:

- (a) reimbursement of eligible costs actually incurred and paid;
- (b) reimbursement on the basis of unit costs;

(c) lump sums not exceeding EUR 100 000 of public support;

(d) flat-rate financing, determined by the application of a percentage to one or several defined categories of costs.

2. The options referred to in paragraph 1 may be combined in respect of a single operation only where each option is applied to different categories of costs or where they are used for successive phases thereof.

3. The amounts referred to in points (b), (c) and (d) of paragraph 1 shall be established on the basis of:

(a) a fair, equitable and verifiable calculation method based on one of the following:

(i) statistical data or other objective information;

(ii) the verified historical data of individual beneficiaries or the application of their usual cost accounting practices;

(b) methods and corresponding unit costs, lump sums and flat-rate financing applied under schemes for grants funded entirely by the Member State concerned for a similar type of operation and beneficiary;

(c) rates established by this Regulation;

(d) a case-by-case basis by reference to a draft budget agreed ex ante by the managing authority, where public support does not exceed EUR 100 000.

4. The amounts calculated in the forms of grants referred to in points (b), (c) and (d) of paragraph 1 shall be regarded as eligible expenditure incurred and paid by the beneficiary for the purpose of applying Title VI.

5. The document setting out the conditions for support for each operation shall set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant.

#### Article 26

##### Eligibility of expenditure

1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in or on the basis of this Regulation.

2. Notwithstanding paragraph 1, the costs eligible for a support from OP I shall be:

- (a) the costs of purchasing food and/or basic material assistance;
- (b) where a public body purchases the food or basic material assistance and provides them to partner organisations, the costs of transporting food or basic material assistance to the storage depots of the partner organisations and storage costs at a flat-rate of 1 % of the costs referred to in point (a) or, in duly justified cases, costs actually incurred and paid;
- (c) the administrative, transport and storage costs borne by the partner organisations at a flat-rate of 5 % of the costs referred to in point (a); or 5 % of the value of the food products disposed of in accordance with Article 16 of Regulation (EU) No 1308/2013;
- (d) the cost of collection, transport, storage and distribution of food donations and directly related awareness raising activities, incurred and paid for by partner organisations;
- (e) the costs of accompanying measures undertaken and declared by the partner organisations delivering directly or under cooperation agreements the food and/or basic material assistance to the most deprived persons at a flat-rate of 5 % of the costs referred to in point (a).

3. Notwithstanding paragraph 1, the costs eligible for support from an operational programme shall be the costs incurred pursuant to Article 27(4) or, for indirect costs incurred pursuant to Article 27(4), a flat-rate of up to 15 % of eligible direct staff costs.

4. The following costs shall not be eligible for a support from the operational programme:

- (a) interest on debt;
- (b) provision of infrastructure;
- (c) costs of second-hand goods;
- (d) value added tax except where it is non-recoverable under national VAT legislation.

#### Article 27

##### Technical assistance

1. At the initiative of, or on behalf of the Commission, and subject to a ceiling of 0,35 % of its annual allocation, the Fund may finance preparation, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementing this Regulation as well as for activities pursuant to Article 10.

2. The Commission shall consult the Member States and the organisations which represent the partner organisations at Union level on the planned use of technical assistance.

3. The Commission shall set out each year its plans on the type of actions related to the measures listed in paragraph 1, when a contribution from the Fund is envisaged, by means of implementing acts.

4. At the initiative of the Member States, and subject to a ceiling of 5 % of the Fund allocation, the operational programme may finance preparation, management, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementing this Regulation. It may also finance technical assistance and capacity building of partner organisations.

#### TITLE V

##### MANAGEMENT AND CONTROL

#### Article 28

##### General principles of management and control systems

Management and control systems shall, in accordance with Article 5(7), provide for:

- (a) a description of the functions of each body involved in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;

- (e) systems for reporting and monitoring where the body responsible entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

#### Article 29

##### Responsibilities under shared management

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities laid down in this Regulation.

#### Article 30

##### Responsibilities of Member States

1. Member States shall fulfil the management, control and audit obligations and assume the resulting responsibilities, which are laid down in the rules on shared management set out in the Financial Regulation and this Regulation.
2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10 000 in contribution from the Fund and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following cases:

- (a) where the irregularity consists solely of the failure to execute, in whole or in part, an operation included in the co-financed operational programme owing to the bankruptcy of the beneficiary;
- (b) those brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;
- (c) those which are detected and corrected by the managing authority or certifying authority before inclusion of the

expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Fund.

The Commission shall be empowered to adopt delegated acts in accordance with Article 62 laying down additional detailed rules on the criteria for determining the cases of irregularity to be reported, the data to be provided and on the conditions and procedures to be applied to determine whether amounts which are irrecoverable shall be reimbursed by Member States.

The Commission shall adopt implementing acts in accordance with the advisory procedure under Article 63(2) setting out the frequency of the reporting and the reporting format to be used.

3. Member States shall ensure that effective arrangements for the examination of complaints concerning the Fund are in place. The scope, rules and procedures concerning such arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements. Member States shall inform the Commission, upon request, of the results of those examinations.

4. All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system. The Commission shall adopt implementing acts in order to establish the terms and conditions with which that electronic data exchange system is to comply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).

#### Article 31

##### Designation of authorities

1. Each Member State shall designate, for each operational programme, a national public authority or body as managing authority. The same managing authority may be designated for two operational programmes.

2. The Member State shall designate, for each operational programme, a national public authority or body as a certifying authority, without prejudice to paragraph 3. The same certifying authority may be designated for two operational programmes.

3. The Member State may designate, for an operational programme, a managing authority to carry out in addition the functions of the certifying authority.

4. The Member State shall designate, for each operational programme, a national public authority or body, functionally independent from the managing authority and the certifying authority, as audit authority. The same audit authority may be designated for two operational programmes.

5. Provided that the principle of separation of functions is respected, the managing authority, the certifying authority for OP I and, for OP II for which the total amount of support from the Fund does not exceed EUR 250 000 000, the audit authority may be part of the same public authority or body.

6. The Member State may designate one or more intermediate bodies to carry out certain tasks of the managing authority or the certifying authority under the responsibility of that authority. The relevant arrangements between the managing authority or certifying authority and the intermediate bodies shall be formally recorded in writing.

7. The Member State or the managing authority may entrust the management of part of an operational programme to an intermediate body by way of an agreement in writing between the intermediate body and the Member State or managing authority. The intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as of its administrative and financial management capacity.

8. The Member State shall lay down in writing rules governing its relationship with the managing authorities, certifying authorities and audit authorities, the relations between such authorities, and the relations of such authorities with the Commission

#### Article 32

##### Functions of the managing authority

1. The managing authority shall be responsible for managing the operational programme in accordance with the principle of sound financial management.

2. As regards the management of the operational programme, the managing authority shall:

- (a) where relevant, support the work of the monitoring committee referred to in Article 11 and provide it with the information it requires to carry out its tasks, in particular the data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators;
- (b) draw up and, after consultation of the relevant stakeholders, while avoiding conflicts of interests, for OP I, or after approval the monitoring committee referred to in Article 11 for OP II, submit to the Commission annual and final implementation reports referred to in Article 13;
- (c) make available to intermediate bodies and beneficiaries information that is relevant to the execution of their tasks and the implementation of operations respectively;
- (d) establish a system to record and store in computerised form data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants in operations co-financed by OP II;
- (e) ensure that the data referred to in point (d) is collected, entered and stored in the system, referred to in point (d) in compliance with the provisions of Directive 95/46/CE and where available, broken down by gender.

3. As regards the selection of operations, the managing authority shall:

- (a) draw up and, where relevant once approved, apply appropriate selection procedures and/or criteria, that are non-discriminatory and transparent;
- (b) ensure that the selected operation:
  - (i) falls within the scope of the Fund and the operational programme;
  - (ii) fulfils the criteria set out in the operational programme and in Articles 22, 23 and 26;
  - (iii) takes into account, where relevant, the principles set out in Article 5(11), (12), (13) and (14);

- (c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, and the time-limit for execution;

- (d) satisfy itself that the beneficiary has the administrative, financial and operational capacity to fulfil the conditions referred to in point (c) before approval of the operation;
- (e) satisfy itself that, where the operation has started before the submission of an application for funding to the managing authority, applicable law relevant for the operation has been complied with;
- (f) determine the type of material assistance for OP I and the type of action for OP II to which the expenditure of an operation shall be attributed.

4. As regards the financial management and control of the operational programme, the managing authority shall:

- (a) verify that the co-financed products and services have been delivered and that expenditure declared by the beneficiaries has been paid and that it complies with applicable law, the operational programme and the conditions for support of the operation;
- (b) ensure that beneficiaries involved in the implementation of operations reimbursed on the basis of eligible costs actually incurred maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;
- (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified;
- (d) set up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of point (g) of Article 28;
- (e) draw up the management declaration and annual summary referred to in point (a) and (b) of the first subparagraph of Article 59(5) of the Financial Regulation.

5. Verifications pursuant to point (a) of paragraph 4 shall include the following procedures:

- (a) administrative verifications in respect of each application for reimbursement by beneficiaries;
- (b) on-the-spot verifications of operations.

The frequency and coverage of the on-the-spot verifications shall be proportionate to the amount of public support to an operation and to the level of risk identified by such verifications and audits by the audit authority for the management and control system as a whole.

6. On-the-spot verifications of individual operations pursuant to point (b) of the first subparagraph of paragraph 5 may be carried out on a sample basis.

7. Where the managing authority is also a beneficiary under the operational programme, arrangements for the verifications referred to in point (a) of paragraph 4 shall ensure adequate separation of functions.

8. The Commission shall be empowered to adopt delegated acts, in accordance with Article 62, laying down rules specifying the information in relation to the data to be recorded and stored in computerised form within the monitoring system established under point (d) of paragraph 2 of this Article.

The Commission shall adopt implementing acts laying down the technical specifications of the system established under point (d) of paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).

9. The Commission shall be empowered to adopt delegated acts, in accordance with Article 62, laying down the detailed minimum requirements for the audit trail referred to in point (d) of paragraph 4 of this Article in respect of the accounting records to be maintained and the supporting documents to be held at the level of the certifying authority, managing authority, intermediate bodies and beneficiaries.

10. The Commission shall, in order to ensure uniform conditions on the implementation of this Article, adopt implementing acts concerning the model for the management declaration referred to in point (e) of paragraph 4. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 63(2).

#### Article 33

##### Functions of the certifying authority

The certifying authority of an operational programme shall be responsible in particular for:

- (a) drawing up and submitting payment applications to the Commission and certifying that they result from reliable accounting systems, are based on verifiable supporting documents and have been subject to verifications by the managing authority;
- (b) drawing up the accounts referred to in point (a) of the first subparagraph of Article 59(5) of the Financial Regulation;

- (c) certifying the completeness, accuracy and veracity of the accounts and that the expenditure entered in them complies with applicable law and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the operational programme and complying with applicable law;
- (d) ensuring that there is a system which records and stores, in computerised form, accounting records for each operation, and which supports all the data required for drawing up payment applications and accounts, including records of amounts recoverable, amounts recovered and amounts withdrawn following cancellation of all or part of the contribution for an operation or an operational programme;
- (e) ensuring for the purposes of drawing up and submitting payment applications that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure;
- (f) taking account, when drawing up and submitting payment applications, of the results of all audits carried out by or under the responsibility of the audit authority;
- (g) maintaining, in a computerised form, accounting records of expenditure declared to the Commission and of the corresponding public contribution paid to beneficiaries;
- (h) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation. Amounts recovered shall be repaid to the budget of the Union prior to the closure of the operational programme by deducting them from the subsequent statement of expenditure.

#### Article 34

##### Functions of the audit authority

1. The audit authority shall ensure that audits are carried out on the proper functioning of the management and control system of the operational programme and on an appropriate sample of operations on the basis of the declared expenditure.

The declared expenditure shall be audited based on a representative sample or, where appropriate, on substantive testing and, as a general rule, on statistical sampling methods.

A non- statistical sampling method may be used on the professional judgement of the audit authority, in duly justified cases, in accordance with internationally accepted audit standards and in any case where the number of operations for an accounting year is insufficient to allow the use of a statistical method.

In such cases, the size of the sample shall be sufficient to enable the audit authority to draw up a valid audit opinion in accordance with point (b) of the first subparagraph of Article 59(5) of the Financial Regulation.

The non-statistical sample method shall cover a minimum of 5 % of operations for which expenditure has been declared to the Commission during an accounting year and 10 % of the expenditure which has been declared to the Commission during an accounting year.

Where the total amount of support from the Fund to an OP I does not exceed EUR 35 000 000, the audit authority shall be allowed to limit the audit activities to an annual system audit that includes substantive testing on a combination of random and risk-based testing of operations. The audit work shall be carried out in accordance with internationally accepted audit standards and shall quantify annually the level of error included in the declarations of expenditure certified to the Commission.

2. Where audits are carried out by a body other than the audit authority, the audit authority shall ensure that any such body has the necessary functional independence.

3. The audit authority shall ensure that audit work takes account of internationally accepted audit standards.

4. The audit authority shall, within eight months of adoption of an operational programme, prepare an audit strategy for the performance of audits. The audit strategy shall set out the audit methodology, the sampling or, where appropriate, substantive testing method for audits on operations and the planning of audits in relation to the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2016 until and including 2024. Where a common management and control system applies to two operational programmes, a single audit strategy may be prepared for the operational programmes concerned. The audit authority shall submit the audit strategy to the Commission upon request.

5. The audit authority shall draw up:

(a) an audit opinion in accordance with point (b) of the first subparagraph of Article 59(5) of the Financial Regulation;

(b) a control report setting out the main findings of the audits carried out in accordance with paragraph 1, including findings with regard to deficiencies found in the management and control systems, and the proposed and implemented corrective actions.

Where a common management and control system applies to two operational programmes, the information required under point (b) of the first subparagraph may be grouped in a single report.

6. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down models for the audit strategy, the audit opinion and the control report. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 63(2).

7. The Commission shall be empowered to adopt delegated acts, in accordance with Article 62, to set out the scope and content of audits of operations and audits of the accounts and the methodology for the selection of the sample of operations referred to in paragraph 1 of this Article.

8. The Commission shall be empowered to adopt delegated acts, in accordance with Article 62, laying down detailed rules on the use of data collected during audits carried out by Commission officials or authorised Commission representatives.

#### Article 35

##### **Procedure for the designation of the managing authority and the certifying authority**

1. The Member State shall notify the Commission of the date and form of the designations, which shall be carried out at an appropriate level, of the managing authority and, where appropriate, of the certifying authority, prior to the submission of the first application for interim payment to the Commission.

2. The designations referred to in paragraph 1 shall be based on a report and an opinion of an independent audit body that assesses the fulfilment by the authorities of the criteria relating to the internal control environment, risk management, management and control activities, and monitoring set out in Annex IV.

The independent audit body shall be the audit authority, or another public or private law body with the necessary audit capacity, which is independent of the managing authority and, where applicable, of the certifying authority, and which shall carry out its work taking account of internationally accepted audit standards.

3. Member States may decide that a managing authority or a certifying authority which has been designated in relation to an ESF co-financed operational programme pursuant to Regulation (EU) No 1303/2013 is deemed to be designated for the purposes of this Regulation.

4. The Commission may request, within one month of notification of the designations referred to in paragraph 1, the report and the opinion of the independent audit body referred to in paragraph 2 and the description of the functions and procedures in place for the managing authority or, where appropriate, the certifying authority. The Commission shall decide whether to request those documents on the basis of its risk assessment.

The Commission may make observations within two months of receipt of the documents referred to in the first subparagraph.

Without prejudice to Article 46, the examination of those documents shall not interrupt the treatment of applications for interim payments.

5. Where existing audit and control results show that the designated authority no longer fulfils the criteria referred to in paragraph 2, the Member State shall, at an appropriate level, fix, according to the severity of the problem, a period of probation, during which the necessary remedial action shall be taken.

Where the designated authority fails to implement the required remedial action within the period of probation determined by the Member State, the Member State, at an appropriate level, shall end its designation.

The Member State shall notify the Commission without delay when a designated authority is put under probation, providing information on the respective period of probation, when following implementation of remedial actions the probation is ended, as well as when the designation of an authority is ended. The notification that a designated body is put on probation by the Member State, without prejudice to the application of Article 46, shall not interrupt the treatment of applications for interim payments.

6. Where the designation of a managing authority or a certifying authority is ended, Member States shall designate, in accordance with the procedure provided for in paragraph 2, a new body to take over the functions of the managing authority or of the certifying authority, and shall notify the Commission thereof.

7. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts concerning the model for the report and opinion of the independent audit body and the description of the functions and procedures in place for the managing authority and, where appropriate, the certifying authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).

*Article 36***Commission powers and responsibilities**

1. The Commission shall satisfy itself on the basis of available information, including information on the designation of bodies responsible for the management and control, the documents provided each year, in accordance with Article 59(5) of the Financial Regulation, by those designated bodies, control reports, annual implementation reports and audits carried out by national and Union bodies, that the Member States have set up management and control systems that comply with this Regulation and that those systems function effectively during the implementation of operational programmes.

2. Commission officials or authorised Commission representatives may carry out on-the-spot audits or checks subject to giving at least 12 working days' notice to the competent national authority, except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid unjustified duplication of audits or checks carried out by Member States, the level of risk to the budget of the Union and the need to minimise the administrative burden on beneficiaries in accordance with this Regulation. The scope of such audits or checks may include, in particular, verification of the effective functioning of management and control systems in a programme or a part thereof, in operations and assessment of the sound financial management of operations or programmes. Officials or authorised representatives of the Member State may take part in such audits or checks.

Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits or checks, shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the Fund or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request.

The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Commission officials and authorised representatives shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of national legislation. However, such officials and representatives shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect of the fundamental rights of the legal subjects concerned.

3. The Commission may require a Member State to take the actions necessary to ensure the effective functioning of their management and control systems or to verify the correctness of expenditure in accordance with this Regulation.

*Article 37***Cooperation with audit authorities**

1. The Commission shall cooperate with audit authorities to coordinate their audit plans and methods and shall immediately exchange with those authorities the results of audits carried out on management and control systems.

2. To facilitate this cooperation in cases where a Member State designates more than one audit authority, the Member State may designate a coordination body.

3. The Commission, the audit authorities and any coordination body shall meet on a regular basis and, as a general rule, at least once a year, unless otherwise agreed, to examine the annual control report, the audit opinion and the audit strategy, and to exchange views on issues relating to improvement of the management and control systems.

## TITLE VI

**FINANCIAL MANAGEMENT, EXAMINATION AND ACCEPTANCE OF ACCOUNTS, FINANCIAL CORRECTIONS AND DECOMMITMENTS**

## CHAPTER 1

***Financial management****Article 38***Budget commitments**

The budget commitments of the Union in respect of each operational programme shall be made in annual instalments during the period between 1 January 2014 and 31 December 2020. The decision of the Commission adopting an operational programme shall constitute a financing decision within the meaning of Article 84 of the Financial Regulation and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each operational programme, the budget commitment for the first instalment shall follow the adoption of the operational programme by the Commission.

The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in the second paragraph, except where Article 16 of the Financial Regulation applies.

*Article 39***Payments by the Commission**

1. Payments by the Commission of the contribution from the Fund to each operational programme shall be made in accordance with budget appropriations and subject to available funding. Each payment shall be posted to the earliest open budget commitment of the Fund.

2. Payments shall take the form of pre-financing, interim payments and payment of the final balance.

#### Article 40

### Interim payments and payment of the final balance by the Commission

1. The Commission shall reimburse as interim payments 90 % of the amount resulting from applying the co-financing rate laid down in the decision adopting the operational programme to the eligible public expenditure included in the payment application. The Commission shall determine the remaining amounts to be reimbursed as interim payments or recovered in accordance with Article 50.

2. Notwithstanding Article 21, the contribution from the Fund through the interim payments and the payment of the final balance shall not be higher than the maximum amount of contribution from the Fund as laid down in the decision of the Commission approving the operational programme.

#### Article 41

### Payment applications

1. The payment application to be submitted to the Commission shall provide all the information necessary for the Commission to produce accounts in accordance with Article 68(3) of the Financial Regulation.

2. Payment applications shall include for the operational programme as a whole and for technical assistance referred to in Article 27(4):

(a) the total amount of eligible public expenditure incurred by beneficiaries and paid in implementing operations, as entered in the accounting system of the certifying authority;

(b) the total amount of public expenditure incurred in implementing operations as entered in the accounting system of the certifying authority.

3. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c) and (d) of Article 25(1). For those forms of grants, the amounts included in a payment application shall be the costs calculated on the applicable basis.

4. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt, implementing acts, laying down the model for payment applications.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).

#### Article 42

### Payments to beneficiaries

1. The managing authority shall ensure that, in the case of grants to partner organisations, beneficiaries are provided with a float that is sufficient to ensure proper implementation of the operations.

2. Subject to the availability of funding from pre-financing and interim payments, the managing authority shall ensure that a beneficiary receives the total amount of eligible public expenditure due in full and no later than 90 days from the date of submission of the payment claim by the beneficiary. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries.

3. The payment deadline referred to in paragraph 2 may be interrupted by the managing authority in either of the following duly justified cases:

(a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of Article 32(4), have not been provided;

(b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.

The beneficiary concerned shall be informed in writing of the interruption and the reasons for it.

#### Article 43

### Use of the euro

1. Amounts set out in operational programmes submitted by Member States, statements of expenditure, requests for payment, accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.

2. Member States which have not adopted the euro as their currency on the date of an application for payment shall convert the amounts of expenditure incurred in national currency into euro. Those amounts shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the certifying authority of the operational programme concerned. The exchange rate shall be published electronically by the Commission each month.

3. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 2 shall continue to apply to all expenditure recorded in the accounts by the certifying authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

#### Article 44

##### Payment and clearance of pre-financing

1. Following the Commission decision adopting the operational programme, a pre-financing amount of 11 % of the Fund's overall contribution to the operational programme concerned shall be paid by the Commission.

2. Pre-financing shall be used only for payments to beneficiaries in the implementation of the operational programme. It shall be made available without delay to the responsible body for this purpose.

3. The total amount paid as pre-financing shall be reimbursed to the Commission if no payment application for the operational programme concerned is sent within 24 months of the date on which the Commission pays the first pre-financing amount. The Union contribution to the operational programme concerned shall not be affected by such reimbursement.

4. The amount paid as pre-financing shall be totally cleared from the Commission accounts at the latest when the operational programme is closed.

#### Article 45

##### Deadline for presentation of interim payment applications and for their payment

1. The certifying authority shall submit on a regular basis an application for interim payment in accordance with Article 41(2) covering amounts entered in its accounting system in the accounting year. However, the certifying authority, where it considers it to be necessary, may include such amounts in payment applications submitted in subsequent accounting years.

2. The certifying authority shall submit the final application for an interim payment by 31 July following the end of the previous accounting year and, in any event, before the first application for interim payment for the next accounting year.

3. The first application for interim payment shall not be made before the notification to the Commission of the designation of the managing authority and the certifying authority in accordance with Article 35.

4. Interim payments shall not be made for an operational programme unless the annual implementation report has been sent to the Commission in accordance with Article 13.

5. Subject to available funding, the Commission shall make the interim payment no later than 60 days after the date on which a payment application is registered with the Commission.

#### Article 46

##### Interruption of the payment deadline

1. The payment deadline for an interim payment claim may be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of six months if:

(a) following information provided by a national or Union audit body, there is clear evidence to suggest a significant deficiency in the functioning of the management and control system;

(b) the authorising officer by delegation has to carry out additional verifications following information that has come to that officer's attention alerting him or her that expenditure in a request for payment is linked to an irregularity having serious financial consequences;

(c) there is a failure to submit one of the documents required under Article 59(5) of the Financial Regulation.

The Member State may agree to an extension of the interruption period for another three months.

2. The authorising officer by delegation shall limit the interruption to the part of the expenditure covered by the payment claim affected by the elements referred to in the first subparagraph of paragraph 1, unless it is not possible to identify the part of the expenditure affected. The authorising officer by delegation shall inform the Member State and the managing authority in writing immediately of the reason for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

#### Article 47

##### Suspension of payments

1. All or part of the interim payments may be suspended by the Commission if one or more of the following conditions are met:

(a) there is a serious deficiency in the effective functioning of the management and control system of the operational programme, which has put at risk the Union contribution to the operational programme and for which corrective measures have not been taken;

- (b) expenditure in a statement of expenditure is linked to an irregularity having serious financial consequences which has not been corrected;
- (c) the Member State has failed to take the necessary action to remedy the situation giving rise to an interruption under Article 46;
- (d) there is a serious deficiency in the quality and reliability of the monitoring system or of the data on indicators.

2. The Commission may decide, by means of implementing acts, to suspend all or part of interim payments, after having given the Member State the opportunity to present its observations.

3. The Commission shall end suspension of all or part of interim payments where the Member State has taken the necessary measures to enable the suspension to be lifted.

#### CHAPTER 2

### **Preparation, examination and acceptance of accounts and closure of operational programmes**

#### Article 48

##### **Submission of information**

For each year from 2016 until and including 2025, Member States shall submit to the Commission by the deadline set out in Article 59(5) of the Financial Regulation, the following documents referred to in that Article, namely:

- (a) the accounts referred to in Article 49(1) of this Regulation, for the preceding accounting year;
- (b) the management declaration and the annual summary referred to in point (e) of Article 32(4) of this Regulation, for the preceding accounting year;
- (c) the audit opinion and the control report referred to in points (a) and (b) of Article 34(5) of this Regulation for the preceding accounting year.

#### Article 49

##### **Preparation of the accounts**

1. The accounts referred to in point (a) of the first subparagraph of Article 59(5) of the Financial Regulation shall be submitted to the Commission for each operational programme. The accounts shall cover the accounting year and shall include the following:

- (a) the total amount of eligible public expenditure entered into the accounting systems of the certifying authority which has been included in payment applications submitted to the

Commission, in accordance with Article 41 and Article 45(2), by 31 July following the end of the accounting year, the total amount of the corresponding eligible public expenditure incurred in implementing operations, and the total amount of corresponding payments made to beneficiaries under Article 42(2);

- (b) the amounts withdrawn and recovered during the accounting year, the amounts to be recovered as at the end of the accounting year and the irrecoverable amounts;

- (c) a reconciliation between the expenditure stated pursuant to point (a) and the expenditure declared in respect of the same accounting year in payment applications, accompanied by an explanation of any differences.

2. Where expenditure previously included in an application for interim payment for the accounting year is excluded by a Member State from its accounts, due to an ongoing assessment of that expenditure's legality and regularity, any or all of that expenditure subsequently found to be legal and regular may be included in an application for interim payment relating to subsequent accounting years.

3. The Commission shall, in order to lay down uniform conditions for the implementation of this Article, adopt implementing acts setting out the model for the accounts referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 63(3).

#### Article 50

##### **Examination and acceptance of accounts**

1. By 31 May of the year following the end of the accounting period, the Commission shall, in accordance with Article 59(6) of the Financial Regulation, carry out an examination of the documents submitted by the Member State under Article 48 of this Regulation.

Upon request by the Commission, the Member State shall provide all necessary additional information to enable the Commission to determine whether the accounts are complete, accurate and true by the deadline set out in the first subparagraph of this paragraph.

2. The Commission shall accept the accounts where it is able to conclude that the accounts are complete, accurate and true. The Commission shall reach such a conclusion where the audit authority has provided an unqualified audit opinion regarding the completeness, accuracy and veracity of the accounts unless the Commission has specific evidence that the audit opinion on the accounts is unreliable.

3. The Commission shall inform the Member State by the deadline set out in paragraph 1 whether it is able to accept the accounts.

4. If for reasons attributable to Member State, the Commission is unable to accept the accounts by the deadline set out in paragraph 1 the Commission shall notify the Member States specifying the reasons in accordance with paragraph 2 and the actions which are required to be undertaken and the time period for their completion. At the end of that period the Commission shall inform the Member State whether it is able to accept the accounts.

5. Issues related to legality and regularity of the underlying transactions concerning expenditure entered in the accounts shall not be taken into account for the purposes of acceptance of the accounts by the Commission. The procedure for examination and acceptance of the accounts shall not interrupt the treatment of applications for interim payments and shall not lead to suspension of payments, without prejudice to Articles 46 and 47.

6. On the basis of the accepted accounts the Commission shall calculate the amount chargeable to the Fund for the accounting year and the consequent adjustments in relation to the payments to the Member State. The Commission shall take into account:

- (i) the amounts in the accounts referred to in point (a) of Article 49(1), and to which the co-financing rate defined in Article 20 is to be applied;
- (ii) the total amount of payments made by the Commission during that accounting year, consisting of the amount of interim payments paid by the Commission in accordance with Article 21 and Article 40(1).

7. After the calculation carried out under paragraph 6 of this Article, the Commission shall pay any additional amount due within 30 days of the acceptance of the accounts. Where there is an amount recoverable from the Member State, it shall be subject to a recovery order issued by the Commission which shall be executed, where possible, by offsetting against amounts due to the Member State under subsequent payments to the same operational programme. Such recovery shall not constitute a financial correction and shall not reduce support from the Fund to the operational programme. The amount recovered shall constitute assigned revenue in accordance with Article 177(3) of the Financial Regulation.

8. Where after applying the procedure set out in paragraph 4, the Commission is unable to accept the accounts, the Commission shall determine, on the basis of the available information and in accordance with paragraph 6, the amount

chargeable to the Fund for the accounting year, and shall inform the Member State. Where the Member State notifies the Commission of its agreement within two months of the transmission by the Commission of the information, paragraph 7 shall apply. In the absence of such agreement, the Commission shall adopt a decision, by means of implementing acts, setting out the amount chargeable to the Fund for the accounting year. Such decision shall not constitute a financial correction and shall not reduce support from the Fund to the operational programme. On the basis of the decision, the Commission shall apply the adjustments to the payments to the Member State in accordance with paragraph 7.

9. The acceptance of the accounts by the Commission, or a decision by the Commission under paragraph 8, shall be without prejudice to the application of corrections under Articles 55 and 56.

10. Member States may replace irregular amounts which are detected after the submission of the accounts by making the corresponding adjustments in the accounts for the accounting year in which the irregularity is detected, without prejudice to Articles 55 and 56.

#### Article 51

##### Availability of documents

1. The managing authority shall ensure that all supporting documents regarding expenditure supported by the Fund on operations for which the total eligible public expenditure is less than EUR 1 000 000, are made available to the Commission and the European Court of Auditors upon request for a period of three years from 31 December following the submission of the accounts in which the expenditure of the operation is included.

In the case of operations other than those referred to in the first subparagraph, all supporting documents shall be made available for a two year period from 31 December following the submission of the accounts in which the final expenditure of the completed operation is included.

A managing authority may decide to apply to operations for which the total eligible expenditure is less than EUR 1 000 000 the rule referred to in second subparagraph.

The time period referred to in the first subparagraph shall be interrupted either in the case of legal proceedings or by a duly justified request of the Commission.

2. The managing authority shall inform beneficiaries of the start date of the period referred to in paragraph 1.

3. The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.

4. The documents shall be kept in a form which permits the identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

5. The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

6. Where documents exist in electronic form only, the computer systems used shall meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

#### Article 52

#### **Submission of closure documents and payment of the final balance**

1. In addition to the documents referred to in Article 48, for the final accounting year from 1 July 2023 to 30 June 2024, Member States shall submit a final implementation report for the operational programme.

2. The final balance shall be paid no later than three months after the date of acceptance of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

#### CHAPTER 3

#### **Financial corrections and recoveries**

#### Article 53

#### **Financial corrections by Member States**

1. The Member States shall in the first instance be responsible for investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Member State shall extend its investigation to cover all operations potentially affected.

2. The Member States shall make the financial corrections required in connection with individual or systemic irregularities detected in operations or operational programmes. Financial corrections shall consist of cancelling all or part of the public contribution to an operation or operational programme.

The Member State shall take into account the nature and gravity of the irregularities and the financial loss to the Fund and shall apply a proportionate correction. Financial corrections shall be recorded in the accounts by the managing authority for the accounting year in which the cancellation is decided.

3. The contribution from the Fund cancelled in accordance with paragraph 2 may be reused by the Member State within the operational programme concerned, subject to paragraph 4.

4. The contribution cancelled in accordance with paragraph 2 may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic irregularity.

5. A financial correction shall not prejudice the Member States' obligation to pursue recoveries under this Article.

#### Article 54

#### **Financial corrections by the Commission**

1. The Commission shall make financial corrections, by means of implementing acts, by cancelling all or part of the Union contribution to an operational programme and effecting recovery from the Member State in order to exclude from Union financing expenditure which is in breach of applicable law.

2. A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:

- (a) the breach has affected the selection of an operation by the body responsible for support from the Fund or in cases where, due to the nature of the breach, it is not possible to establish that impact but there is a substantiated risk that the breach has had such an effect;
- (b) the breach has affected the amount of expenditure declared for reimbursement by the budget of the Union or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact but there is a substantiated risk that the breach has had such an effect.

3. When deciding on a financial correction under paragraph 1, the Commission shall respect the principle of proportionality by taking account of the nature and gravity of the breach of applicable law and its financial implications for the budget of the Union. The Commission shall keep the European Parliament and the Council informed of decisions taken to apply financial corrections.

*Article 55***Criteria for financial corrections by the Commission**

1. The Commission shall make financial corrections by means of implementing acts by cancelling all or part of the Union contribution to an operational programme in accordance with Article 54 where, after carrying out the necessary examination, it concludes that:
  - (a) there is a serious deficiency in the effective functioning of the management and control system of the operational programme which has put at risk the Union contribution already paid to the operational programme;
  - (b) the Member State has not complied with its obligations under Article 53 prior to the opening of the correction procedure under this paragraph;
  - (c) expenditure contained in a payment application is irregular and has not been corrected by the Member State prior to the opening of the correction procedure under this paragraph.

The Commission shall base its financial corrections on individual cases of identified irregularity and shall take account of whether an irregularity is systemic. Where it is not possible to quantify precisely the amount of irregular expenditure charged to the Fund, the Commission shall apply a flat-rate or extrapolated financial correction.

2. The Commission shall, when deciding on a correction under paragraph 1, respect the principle of proportionality by taking account of the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the operational programme.
3. Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after examining the measures taken by the Member State concerned under Article 53(2), the notifications sent under Article 30(2), and any replies from the Member State.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 62, laying down detailed rules concerning the criteria for determining serious deficiencies in the effective functioning of management and control systems, including the main types of such deficiencies, the criteria for establishing the level of financial correction to be applied and the criteria for applying flat-rates or extrapolated financial corrections.

*Article 56***Procedure for financial corrections by the Commission**

1. Before taking a decision on a financial correction, the Commission shall launch the procedure by informing the Member State of the provisional conclusions of its examination and requesting the Member State to submit its comments within two months.
2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat-rate, the Member State shall be given the opportunity to demonstrate, through an examination of the documentation concerned, that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Member State may limit the scope of that examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.
3. The Commission shall take account of any evidence provided by the Member State within the time limits set out in paragraphs 1 and 2.
4. Where the Member State does not accept the provisional conclusions of the Commission, the Member State shall be invited to a hearing by the Commission, in order to ensure that all relevant information and observations are available as a basis for conclusions by the Commission on the application of the financial correction.
5. In the event of an agreement, and without prejudice to paragraph 7 of this Article, the Member State may reuse the Fund in accordance with Article 53(3).
6. In order to apply financial corrections the Commission shall take a decision, by means of implementing acts, within six months of the date of the hearing, or of the date of receipt of additional information where the Member State agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six month period shall begin to run two months after the date of the letter of invitation to the hearing sent by the Commission.
7. Where the Commission in carrying out its responsibilities under Article 36, or the European Court of Auditors, detects irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce support from the Fund to the operational programme.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of a management and control system which, prior to the date of detection by the Commission or the European Court of Auditors:

- (a) had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 59(5) of the Financial Regulation, or in other audit reports of the audit authority submitted to the Commission and appropriate measures taken; or
- (b) had been the subject of appropriate remedial measures by the Member State.

The assessment of serious deficiencies in the effective functioning of a management and control system shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

- (a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;
- (b) for the purpose of applying a flat-rate or extrapolated correction, exclude irregular expenditure previously detected by the Member State which has been the subject of an adjustment in the accounts in accordance with Article 50(10), and expenditure subject to an ongoing assessment of its legality and regularity under Article 49(2);
- (c) take into account flat-rate or extrapolated corrections applied to the expenditure by the Member State for other serious deficiencies detected by the Member State when determining the residual risk for the budget of the Union.

#### Article 57

##### Repayment

1. Any repayment due to be made to the budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article 73 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.

2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

#### Article 58

##### Proportional control of operational programmes

1. Operations for which the total eligible expenditure does not exceed EUR 150 000 shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Other operations shall not be subject to more than one audit per accounting year either by the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors, provided that the results of the audit work performed by the European Court of Auditors for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.

2. The audit of an operation supported by an OP I may cover all stages of its implementation and all levels of the distribution chain, with the sole exception of control of the end recipients, unless a risk assessment establishes a specific risk of irregularity or fraud.

3. For operational programmes for which the most recent audit opinion indicates that there are no significant deficiencies, the Commission may agree with the audit authority in the subsequent meeting referred to in Article 37(2) that the level of audit work required may be reduced so that it is proportionate to the risk established. In such cases, the Commission shall not carry out its own on-the-spot audits unless there is evidence suggesting deficiencies in the management and control system affecting expenditure declared to the Commission in an accounting year for which the accounts have been accepted by the Commission.

4. For operational programmes for which the Commission concludes that the opinion of the audit authority is reliable, it may agree with the audit authority to limit the Commission's own on-the-spot audits to audit the work of the audit authority unless there is evidence of deficiencies in the work of the audit authority work for an accounting year for which the accounts have been accepted by the Commission.

5. Notwithstanding paragraph 1, the audit authority and the Commission may carry out audits of operations in the event that a risk assessment or an audit by the European Court of Auditors establishes a specific risk of irregularity or fraud, in the case of evidence of serious deficiencies in the effective functioning of the management and control system of the operational programme concerned, and, during the period referred to in Article 51(1). The Commission may, for the purpose of assessing the work of an audit authority, review the audit trail of the audit authority or take part in the on-the-spot audits of the audit authority and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the audit authority, the Commission may carry out audits of operations.

## CHAPTER 4

**Decommitment**

## Article 59

**Decommitment**

1. The Commission shall decommit any part of the amount in an operational programme that has not been used for payment of the pre-financing and interim payments by 31 December of the third financial year following the year of budget commitment under the operational programme or for which a payment application drawn up in accordance with Article 41 has not been submitted in accordance with Article 45, including any payment application for which all or part is subject to an interruption of the payment deadline or suspension of payments.

2. That part of commitments still open on 31 December 2023 shall be decommitted if any of the documents required under Article 52(1) has not been submitted to the Commission by the deadline set out in Article 52(1).

## Article 60

**Exception to the decommitment**

1. The amount concerned by decommitment shall be reduced by the amounts equivalent to that part of the budget commitment for which:

- (a) the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
- (b) it has not been possible to make a request for payment for reasons of force majeure seriously affecting implementation of all or part of the operational programme.

The national authorities claiming force majeure under point (b) of the first subparagraph shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the operational programme.

For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.

2. By 31 January, the Member State shall send to the Commission information on the exceptions referred to in points (a) and (b) of the first subparagraph of paragraph 1 for the amount to be declared by the end of the preceding year.

## Article 61

**Procedure**

1. The Commission shall inform the Member State and the managing authority in good time whenever there is a risk of application of the decommitment rule under Article 59.

2. On the basis of the information it received as of 31 January, the Commission shall inform the Member State and the managing authority of the amount of the decommitment resulting from that information.

3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.

4. By 30 June, the Member State shall submit to the Commission a revised financing plan reflecting, for the financial year concerned, the reduced amount of support of the operational programme. Failing such submission, the Commission shall revise the financing plan by reducing the contribution from the Fund for the financial year concerned.

5. The Commission shall amend the decision adopting the operational programme, by means of implementing acts, no later than 30 September.

## TITLE VII

**DELEGATIONS OF POWER, IMPLEMENTING AND FINAL PROVISIONS**

## Article 62

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegations of power referred to in Article 13(6), the fifth subparagraph of Article 30(2), the first subparagraph of Article 32(8), Article 32(9), Article 34(7), Article 34(8) and Article 55(4) shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.

3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

4. The delegated acts shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force at the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

If the European Parliament or the Council objects to a delegated act, the act shall not enter into force. The institution that objects to the delegated act shall state the reasons for its objections.

#### Article 63

##### **Committee Procedure**

1. The Commission shall be assisted by a Committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act in respect of the implementing powers referred to in the second subparagraph of Article 32(8) of this Regulation, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

#### Article 64

##### **Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*. It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 March 2014.

*For the European Parliament*  
The President  
M. SCHULZ

*For the Council*  
The President  
D. KOURKOULAS

## ANNEX I

## OPERATIONAL PROGRAMME TEMPLATES

## 1. Template for Operational Programme OP I

	Chapter Section Sub-section	Description / Observations	Size (characters)
1.	IDENTIFICATION	The purpose of this section is to identify only the programme concerned. This section shall clearly state the following:  Member State  Name of the Operational Programme  CCI	200
2.	PROGRAMME FORMULATION		
2.1.	Situation	An identification and a justification of the material deprivation(s) to be addressed	4 000
		Indication of the type of material deprivation(s) retained for the OP.	200
2.2.	Material deprivation addressed	One section (and the corresponding sub-sections) shall be provided for each type of material deprivation to be addressed.	
2.2.1.	Description	Description of the main characteristics of the distribution of food or basic material assistance to be provided and the corresponding accompanying measures.	4 000
2.2.2.	National schemes	Description of the national schemes to be supported	2 000
2.3.	Other	Any other information deemed necessary	4 000
3.	IMPLEMENTATION		
3.1.	Identification of most deprived persons	Description of the mechanism setting the eligible criteria of the most deprived persons, differentiated if necessary by type of material deprivation addressed.	2 000
3.2.	Selection of operations	Criteria for the selection of operations and the description of the selection mechanism, differentiated if necessary by type of material deprivation addressed.	2 000
3.3.	Selection of partner organisations	Criteria for the selection of partner organisations, differentiated if necessary by type of material deprivation addressed.	2 000
3.4.	Complementarity with ESF	Description of the mechanism to ensure complementarity with the ESF	4 000
3.5.	Institutional set-up	The identification of the managing authority, the certifying authority where applicable, the audit authority and the body to which payments will be made by the Commission	2 000
3.6.	Monitoring and evaluation	Description of how the programme implementation will be monitored.	4 000
3.7.	Technical assistance	The description of the planned use of technical assistance pursuant to Article 27(4), including actions to reinforce the administrative capacity of the beneficiaries in relation to sound financial management of operations	4 000

Chapter Section Sub-section	Description / Observations	Size (characters)
4. INVOLVEMENT OF STAKEHOLDERS	A description of the measures taken to involve all relevant stakeholders as well as, where appropriate, the competent regional, local and other public authorities in the preparation of the operational programme.	2 000
5. FINANCIAL PLAN	This section shall contain:  5.1. a table specifying for each year in accordance with Article 20 the amount of the financial appropriation envisaged for support from the Fund and the co-financing;  5.2. a table specifying, for the whole programming period, the amount of the total financial appropriation of the support from the operational programme for each type of material deprivation addressed as well as the corresponding accompanying measures.	Text: 1 000  Data in CSV or XLS format

Format for financial data (section 5):

- 5.1. Financing plan of the operational programme giving the annual commitment of the Fund and corresponding national co-financing in the operational programme (in EUR)

	Total	2014	2015	...	2020
Fund (a)					
National co-financing (b)					
public expenditure (c) = (a) + (b)					
Co-financing rate (d) = (a) / (c)					

- 5.2. Financing plan giving the amount of the total financial appropriations of the support from the operational programme for each type of material deprivation addressed as well as the corresponding accompanying measures (in EUR)

Type of material assistance	Public expenditure
Total	
Technical assistance	
Type of material assistance 1	
of which, accompanying measures	
Type of material assistance 2	
of which, accompanying measures	
Type of material assistance n	
of which, accompanying measures	

## 2. Template for Operational Programme OP II

	Chapter Section Sub-section	Description / Observations	Size (characters)
1.	IDENTIFICATION	The purpose of this section is only to identify the programme concerned. This section shall clearly state the following:  Member State  Name of the Operational Programme  CCI	200
2.	PROGRAMME FORMULATION		
2.1.	Strategy	Description of strategy for the programme contribution to the promotion of social cohesion and poverty reduction in accordance with the Europe 2020 strategy, including a justification of the choice of assistance priority;	20 000
2.2.	Intervention logic	Identification of the national needs	3 500
		Specific objectives of the operational programme	7 000
		Expected results and corresponding output and results indicators, with a baseline and a target value (for each specific objective)	3 500
		Identification of the most deprived persons to be targetted	3 500
		Financial indicators	2 000
2.3.	Other	Any other information deemed necessary	3 500
3	IMPLEMENTATION		
3.1.	Actions	Description of the types and examples of actions to be supported and their contribution to the specific objectives	7 000
3.2.	Selection of operations	Guiding principles for the selection of operations, differentiated, if necessary, by type of actions	3 500
3.3.	Beneficiaries	Identification of types of beneficiaries (where appropriate), differentiated, if necessary by type of actions	3 500
3.4.	Complementarity with ESF	Description of the mechanism to ensure complementarity with the ESF and prevention of overlap and double funding	4 000
3.5.	Institutional set-up	The identification of the managing authority, the certifying authority where applicable, the audit authority and the body to which payments will be made by the Commission	2 000
3.6.	Monitoring and evaluation	This sub-section shall describe how the programme implementation will be monitored. There is, in particular, a need to explain how indicators will be used to track programme implementation. The indicators shall include financial indicators relating to expenditures allocated and programme specific output indicators relating to the operations supported and programme specific result indicators in relation to each specific objective.	4 000
3.7.	Technical assistance	The description of the planned use of technical assistance pursuant to Article 27(4), including actions to reinforce the administrative capacity of the beneficiaries in relation to sound financial management of operations	4 000

Chapter Section Sub-section	Description / Observations	Size (characters)
4. INVOLVEMENT OF STAKEHOLDERS	A description of the measures taken to involve all relevant stakeholders as well as, where appropriate, the competent regional, local and other public authorities in the preparation of the operational programme;	2 000
5. FINANCIAL PLAN	This section shall contain:  5.1. a table specifying for each year in accordance with Article 20 the amount of the financial appropriation envisaged for support from the Fund and the co-financing;  5.2. a table specifying, for the whole programming period, the amount of the total financial appropriation of the support from the operational programme for each type of action supported	Text: 1 000  Data in CSV or XLS format

Format for financial data (section 5):

- 5.1. Financing plan of the operational programme giving the annual commitment of the Fund and corresponding national co-financing in the operational programme (in EUR)

	Total	2014	2015	...	2020
Fund (a)					
National co-financing (b)					
public expenditure (c) = (a) + (b)					
Co-financing rate (*) (d) = (a) / (c)					

(\*) This rate may be rounded to the nearest whole number in the table. The precise rate used to reimburse expenditure is the ratio (d).

- 5.2. Financing plan giving the amount of the total financial appropriations of the support from the Operational programme for each type of action (in EUR)

Intervention area	Public expenditure
Total	
Technical Assistance	
Type of action 1	
Type of action 2	
...	
Type of action n	

## ANNEX II

**Annual breakdown of commitment appropriation for 2014 to 2020 (in 2011 prices)**

2014	EUR	485 097 840
2015	EUR	485 097 840
2016	EUR	485 097 840
2017	EUR	485 097 840
2018	EUR	485 097 840
2019	EUR	485 097 840
2020	EUR	485 097 840
Total	EUR	3 395 684 880

## ANNEX III

## The allocation of the Fund for the period 2014–2020 per Member State (in 2011 prices)

Member States	EUR
Belgium	65 500 000
Bulgaria	93 000 000
Czech Republic	20 700 000
Denmark	3 500 000
Germany	70 000 000
Estonia	7 100 000
Ireland	20 200 000
Greece	249 300 000
Spain	499 900 000
France	443 000 000
Croatia	32 500 000
Italy	595 000 000
Cyprus	3 500 000
Latvia	36 400 000
Lithuania	68 500 000
Luxembourg	3 500 000
Hungary	83 300 000
Malta	3 500 000
Netherlands	3 500 000
Austria	16 000 000
Poland	420 000 000
Portugal	157 000 000
Romania	391 300 000
Slovenia	18 200 000
Slovakia	48 900 000
Finland	20 000 000
Sweden	7 000 000
United Kingdom	3 500 000
Total	3 383 800 000

## ANNEX IV

**Designation Criteria for the managing authority and the certifying authority**

## 1. Internal control environment

- (i) existence of an organisational structure covering the functions of managing and certifying authorities and the allocation of functions within each of them, ensuring that the principle of separation of functions, where appropriate, is respected;
- (ii) framework for ensuring, in case of delegation of tasks to intermediate bodies, the definition of their respective responsibilities and obligations, verification of their capacities to carry out delegated tasks and the existence of reporting procedures;
- (iii) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid;
- (iv) Plan for allocation of appropriate human resources with necessary technical skills, at different levels and for different functions in the organisation.

## 2. Risk management

Taking into account the principle of proportionality, a framework for ensuring that an appropriate risk management exercise is conducted when necessary, and in particular, in the event of major modifications to the activities.

## 3. Management and control activities

## A. Managing authority

- (i) procedures regarding grant applications, appraisal of applications, selection for funding, including instructions and guidance ensuring the contribution of operations to achieving the specific objectives and results of the operational programme in accordance with the provisions of point (b) of Article 32(3) of this Regulation;
- (ii) procedures for management verifications including administrative verifications in respect of each application for reimbursement by beneficiaries and the on-the-spot verifications of operations;
- (iii) procedures for treatment of applications for reimbursement by beneficiaries and authorisation of payments;
- (iv) procedures for a system to collect, record and store in computerised form data on each operation, including, where appropriate, data on individual participants and a breakdown of data on indicators by gender when required, and to ensure that systems security is in line with internationally accepted standards;
- (v) procedures established by the managing authority to ensure that beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to an operation;
- (vi) procedures for putting in place effective and proportionate anti-fraud measures;
- (vii) procedures to ensure an adequate audit trail and archiving system;
- (viii) procedures to draw up the management declaration of assurance, report on the controls carried out and weaknesses identified, and the annual summary of final audits and controls;
- (ix) procedures to ensure the provision to the beneficiary of a document setting out the conditions for support for each operation.

## B. Certifying authority

- (i) procedures for certifying interim payment applications to the Commission;
- (ii) procedures for drawing up the accounts and certifying that they are true, complete and accurate and that the expenditure complies with applicable law taking into account the results of all audits;

(iii) procedures for ensuring an adequate audit trail by maintaining accounting records including amounts recoverable, recovered and withdrawn for each operation in computerised form;

(iv) procedures, where appropriate, to ensure that it receives adequate information from the managing authority on the verifications carried out, and the results of the audits carried out by or under the responsibility of the audit authority.

#### 4. Monitoring

##### A. Managing authority

(i) where relevant, procedures to support the work of the monitoring committee;

(ii) procedures to draw up and submit to the Commission annual and final implementation reports.

##### B. Certifying authority

Procedures on the fulfilment of its responsibilities for monitoring the results of the management verifications and the results of the audits carried out by or under the responsibility of the audit authority before submitting payment applications to the Commission.

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