

**Transcripted Q&A
from the Webinar on the Horizontal Enabling Conditions
19 October 2020**

Disclaimer:

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The Q&A transcript reflects information available at the time of the webinar, 19 October 2020. It should be noted that the underlying regulatory framework for the 2021-2027 programmes is still under negotiations and that the replies may require review pending the outcome of these negotiations.

QUESTION	ANSWER
HEC 'Effective monitoring mechanisms of the public procurement market' and 'Tools and capacity for effective application of State aid rules'	
1. Please confirm if we correctly interpret the content of the phrase: "Where national systems provide such information" in criterion 2b as an optional obligation to provide the relevant information and only if the national systems provide such information.	This is an optional obligation that is linked to the possibility of your national system to functionally retrieve the information.
2. It would be interesting to know what other MSs are doing (tools in place for both public procurement and state aid) - is there, for example, an overview of good practices, or something similar?	Concerning the tools in place for public procurement, many MSs have national platforms called Registers that document the whole lifespan of the contract including the public procurement procedures. When that happens, it becomes much easier for the MS to be able to demonstrate that the conditions are fulfilled. Thus, the MS can properly monitor all the elements that are required in the conditions. I do not know which MS this question comes from, but you are welcome to get in touch with our colleagues in Unit G1 (DG GROW) for more information on this.
HEC related to the EU Charter of Fundamental Rights and the UNCRPD	
3. What is good practice for complaints and cases of non-compliance?	With regard to the cases of non-compliance, cases of non-compliance are the cases where the bodies in accordance with the institutional and legal framework of the MS are competent for making an assessment whether the Charter is complied with and they conclude that it was not complied with. For this, you have to see within your MS with this competent authority and that will be the basis for the reporting to the monitoring committee. For the complaints, it has now been included in Article 63(6) of the CPR, so you have a clear definition of what the complaints are.
4. Is the second criterion applicable to all CPR funds, or only to the ESF+?	It is applicable to all the CPR funds. For example, accessibility is very important when building a facility, so it is something that should be considered when investing with the ERDF. All these criteria are horizontal for all the CPR funds (with the exception of the horizontal enabling condition on state aid, which does not apply to the HOME funds).
General Questions	
5. The HEC on SA rules is not applicable to DG HOME funds. Do these rules have to be monitored during implementation of AMIF, ISF and BMVI programmes, or not at all?	Since these horizontal enabling conditions do not apply to the programmes supported by the DG HOME funds, MSs do not need to provide any info in Table 12 of their programmes on these horizontal enabling conditions and they do not need to monitor the fulfilment of these horizontal enabling conditions.
6. Is it right that the Member States can already send their draft of horizontal condition to DG REGIO?	MSs are encouraged to send their draft self-assessment - arrangements for the fulfilment of the horizontal enabling conditions. We will do a preliminary assessment of those arrangements and we will provide a preliminary opinion on them.
7. Could you clarify what the consequences are for failing to fulfil all criteria in 2020, or 2021?	In case one of the horizontal enabling conditions is not fulfilled at the time of approval of the programme by the Commission, no payment can be made by the Commission under the entire programme until the horizontal enabling condition is fulfilled (based on the provisional common understanding reached by the co-legislators). That means that the MS concerned may declare expenditure to the Commission, but the Commission shall not reimburse it until the horizontal enabling condition in question is fulfilled. This does not apply to the operations that contribute to the fulfilment of the corresponding enabling condition.
8. If the member state has 6 programmes, does it mean that the assessment by the Commission will take place 6 times?	Since the Commission assesses the fulfilment of enabling conditions in the framework of its assessment of programmes, yes, the Commission will assess Table 12 for all 6 programmes. If a MS has 6 programmes, then 6 times. Of course, not all criteria for the fulfilment of enabling conditions are programme specific. MSs may decide to provide arrangements at the national level. In that case, the Commission will take into account its previous assessments.
9. Can you give an example on an operation contributing to the fulfilment of a HEC?	It will be always assessed case by case which operations are contributing to the fulfilment and which are not. One example could be taking the EU Charter of Fundamental Rights / the UNCRPD into account for the capacity building of managing authorities.
10. Are the Enabling conditions to be met at the member state level or at the level of each fund? The point is whether each managing authority should prepare its own table with information on meeting these conditions?	Some horizontal enabling conditions contain criteria, which are not programme-specific and can be fulfilled only at the national level or at the appropriate territorial level in accordance with the institutional and legal framework of each MS). You will hear about it more during the presentation on the horizontal enabling condition related to the UN Convention on the Rights of Persons with Disabilities. So, some enabling conditions/ some criteria can only be fulfilled at the MS level or other appropriate territorial level in accordance with the MS institutional and legal framework. For some other criteria, MSs can have programme-specific arrangements. But, in any case, MSs have to provide an assessment of all relevant enabling conditions for the programmes, for each programme

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		in Table 12.
11.	In the case where a condition that is not met, the MS submits a payment claim and the commission does not reimburse, does it affect the N+2 target?	Non-fulfilment affects payments within the year. The Commission shall not reimburse declared relevant expenditure until the unfulfilled enabling condition is fulfilled and until the COM has informed the MS of the fulfilment. If it is a horizontal enabling condition, the payments for the entire programme will be affected. If it is a thematic enabling condition, the payments under the corresponding specific objective will be affected. Nevertheless, inclusion of such expenditure in payment application (the Appendix) is sufficient to allow that this expenditure counts towards decommitment target, which was the underlying concern of the co-legislators, while it was additionally clarified in Article 92(5) that amounts not reimbursed shall be deducted from the accounts (so to keep the calculation of the balance an automatic exercise).
12.	If a condition is not met, no payment will be made, but will the financial and participants' objectives be taken into account?	Yes, even if an enabling condition is not fulfilled, MSs still may include expenditure affected by the unfulfilled enabling condition in payment applications. These payment applications will be taken into account for the purpose of decommitment. However, at the end of the programming period, at the closure of the programme, if payment applications had been submitted but not reimbursed by the Commission due to non-fulfilment, with the unfulfilled enabling condition, these payments cannot be processed. Information on participants supported should also be reported.
13.	I would like to come back to the question whether the enabling conditions are to be met at national level or at regional level? We understood that even the regional programmes should fill in Table 12. Does it mean that they have to fulfil all part of the enabling conditions too?	Every programme needs to contain the assessment of the relevant enabling condition in Table 12. It is up to the MSs how these enabling conditions will be fulfilled, be it at regional or national level in accordance with the MS institutional and legal framework). It also depends on the enabling condition and on the specific criteria in question. Some criteria, like the first criteria of HEC that is related to the UNCRPD, can be fulfilled only at the national level, because here a national framework is required. From the nature/content of the criteria, some can be fulfilled at national level, some at regional or programme level. Every programme shall contain the assessment of the relevant enabling conditions. Even if an enabling condition is fulfilled at national level, the assessment should be included in Table 12 of the regional programmes. The body responsible for its fulfilment will remain the one at national level.
14.	If the Enabling Condition is not fulfilled, how can the Commission know what expenses are included in the payment claim? Whether it is related to the unfulfilled condition or not? MS are not required to provide such details in the payments claims.	MSs may include any expenditure, including expenditure affected by the unfulfilled enabling condition in payment applications. Two situations can arise: 1. In the case of a non-fulfilled horizontal enabling condition the Commission should not reimburse any expenditure included in the payment applications submitted to the Commission under the entire programme(s) concerned, until the unfulfilled horizontal enabling condition is fulfilled (with the exception of expenditure related to operations that contribute to the fulfilment of the unfulfilled horizontal enabling condition). The reason for that is that horizontal enabling conditions are applicable to all specific objectives in of the programmes. The Commission naturally knows what are the programmes under this circumstances and will not make any reimbursements for them. 2. In the case the thematic enabling conditions: they are applicable only to certain specific objectives in programmes. Indeed, the template for the payment application only requires information at the level of the priorities and categories of region for Cohesion Policy not specific objectives. As there is a gap in information, in case of an unfulfilled thematic enabling condition, the MS will be required to justify what is included in the payment claim. Since the Commission cannot reimburse expenditure linked to an unfulfilled enabling condition (unless it contributes to its fulfilment), the Commission will have to receive the necessary information from the MS; e.g. whether expenditure related to the specific objective that is impacted by the non-fulfilment of a thematic enabling condition is included.
15.	I need further clarification: would the EC pay retrospective costs that arise during the time when the MS did not fulfil the horizontal condition (e.g. public procurement or state aid control)?	Once the COM confirms fulfilment of the condition by the MS, the MS can submit (if not done yet at all) or move related amounts from the Appendix (information purposes) to Table 1 (formal claim of amounts to be reimbursed) in the template of the payment application for the next payment application. The co-financing rate in force at the time when this payment application is submitted will be used to calculate the amount to be reimbursed, as usual.
16.	Could you please explain what will be the consequences of not meeting the enabling criteria (not horizontal), responding to the specific objective referring to the social inclusion, bearing in mind the 25% concentration rule would not be met if the enabling condition assessment is not being met?	There will be several thematic enabling conditions that will have an impact on social inclusion as defined in the ESF+ Regulation: The one on social inclusion, the one on the Roma integration strategy, and the one on health. It is the general rule that applies, if it is not fulfilled we will not reimburse, but the 25% is in terms of allocation. The MS needs to allocate the money, and then of course we expect them to fulfil the thematic enabling condition as soon as possible. However, it should start investing anyway and the Commission will reimburse it as soon as the MS fulfils the concerned enabling condition.
17.	Is not the thematic concentration at programming level?	Yes, it is. MSs should allocate their resources, 25% specifically to the social inclusion specific objectives.
18.	Charter on Fundamental Rights: are we supposed to invite the UNHCR to assess this?	You can decide on which partners to involve. From your side, it would be important to involve your fundamental rights body in the MS, which is in charge of that, but there might be other relevant bodies. For example, you might have a very active civil society organization that could be involved in the process and could help you draft a checklist or could help you with the selection criteria to ensure that they are in line with the Charter. Therefore, this is up to you as it is not included in the criteria and we will not impose who should be involved, so it can be broader. However, there should

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	be a relevant partner involved to show that you have the correct expertise when doing this.
<p>19. I would like to ask if auto-assessment of managing authorities is sufficient or if the compliance with the Charter/UNCRCPD has to be assessed independently, taking into account the independence of NHRIs (National Human Rights Institutions).</p>	<p>The Commission, when assessing the enabling conditions is assessing the self-assessments of the MSs. Therefore, we will base our assessment on what you provide, so everything that needs to be assessed to allow us to see whether something is fulfilled or not fulfilled should be included in your programmes. Of course, if we know that there is a major problem that has been flagged by for example the NHRI then we will ask you the question because it should be corrected. Therefore, we also have other knowledge so we need to make sure what we read in your programmes is also what we know from other sources or if we have had complaints or something like that.</p> <p>I wanted to refer back to a question about whether the NHRIs should be taken into account for the monitoring. I will answer specifically for the UNCRCPD. The UNCRCPD in Article 33 requires to set up a framework including an independent monitoring mechanism to carry out the monitoring and to address the compliance with the Convention. In this case, if in the first criteria where you have this complete framework, this governance setting up for the Convention should be put in place and of course, their views and inputs are very relevant. This does not take away that we will base our assessment on your self-assessment but the views of the monitoring framework, which is a requirement under article 33, cannot be ignored and it should be put in place and be used.</p>
<p>20. Concerning the 2nd criterion of the EU Charter of Fundamental rights: Are responsible authorities / bodies obliged to report to the MC regarding the cases of non-compliance of operations with the Charter only for the complaints submitted in accordance with Article 63(3) of the CPR, or does this obligation apply also to those cases of non-compliance that had been found by the Audit Authority in the auditing procedures, even if no complaint had been lodged?</p>	<p>The enabling condition, as re-worded by the co-legislator in the provisional common understanding, covers both complaints, so covered by Article 63(6), and cases of non-compliance, which is broader. If there is a finding that something is not compliant than it should also be presented, so it is broader than just the complaints and the Article 63.</p>