Issue paper 7 – Increasing policy effectiveness through the reassessment of the conditionality mechanisms

October 2023

Group of high-level specialists on the future of Cohesion Policy

The European Commission, the Directorate-General Regional and Urban Policy (lead) and the Directorate-General Employment, Social Affairs and Inclusion (associated) have set up a High-level Group on the future of Cohesion Policy. The group includes members from academia and practice and in 2023 will meet nine times to reflect on current and future needs and the functioning of Cohesion Policy.

The group will offer conclusions and recommendations that will feed the reflection process on Cohesion Policy post-2027 including through the 9th Cohesion Report in 2024 and the mid-term review of Cohesion Policy programmes in 2025.

Disclaimer

The opinions expressed in this paper are the sole responsibility of the authors and do not represent the official position of the European Commission.

Contact

EUROPEAN COMMISSION
Directorate-General Regional and Urban Policy

Unit B.1 — Policy Development and Economic Analysis

E-mail: REGIO-FUTURE-COHESION-POLICY@ec.europa.eu

European Commission

B-1049 Brussels

Issue paper 7:

Increasing policy effectiveness through the reassessment of the conditionality mechanisms

1 Background and objectives

Cohesion Policy needs to be understood in the context of EU economic governance, the institutions and procedures furthering EU economic objectives with coordinated policies promoting economic and social progress for the EU and its citizens.[1]

Cohesion has been pushing reforms in Member States through ex-ante conditionality/enabling conditions and has been increasingly aligned with the EU economic governance through conditionality mechanisms that enable the suspension of EU cohesion funding if a Member State fails to comply with EU rules.

This paper focuses on enabling conditions (previously known as ex-ante conditionalities) and macro-economic conditionalities as well as the rule of law conditionality mechanism, including lessons learnt in terms of benefits and limitations of these instruments.

1.1 Evolution of conditionality mechanisms in Cohesion Policy

In the period between 1994 and 2013 there were two conditionality mechanisms in Cohesion Policy: 1) the macro-economic conditionality enabling the suspension of resources under the Cohesion Fund (CF) and 2) the one prohibiting payments

[1] The framework relies on:

- The Treaty on the Functioning of the EU (TFEU): This requires government deficits to remain below 3% of gross domestic product (GDP) and public debt below 60% of GDP.
- The stability and growth pact: Rules and procedures to strengthen the coordination of national fiscal and economic policies in the EU, adopted in 1997.
- The European Semester: An annual cycle of economic, fiscal, employment and social policy coordination within the EU, introduced in 2011.
- The six-pack and two-pack legislative reforms: Additional rules and procedures to strengthen the stability and growth pact, adopted in 2011 and 2013.

In April 2023, the European Commission put forward three legislative packages to reorganise the EU's economic governance framework. See https://www.consilium.europa.eu/en/policies/economic-governance-framework/

where investments supported by Structural Funds are concerned by a reasoned opinion linked to an infringement procedure under Article 226 of the Treaty[2].

Since 2014, conditionalities in Cohesion Policy have significantly expanded and the related procedure has become more detailed and specific, notably with the ex-ante conditionalities/enabling conditions, enhanced macro-economic conditionality and the rule of law conditionality mechanism.

Ex-ante conditionalities / enabling conditions

In the 2014-2020 programming period, ex-ante conditionalities[3] were introduced, addressing all Member States. Based on pre-defined criteria, these conditions were designed as prerequisites for the efficient use of EU funding for all European Structural and Investment (ESI) Funds. When preparing ERDF, CF and ESF operational programmes, Member States were requested to assess whether the corresponding conditions were fulfilled. If not, action plans were needed to ensure the conditions were fulfilled by the end of 2016.

For the 2021-2027 period, ex-ante conditionalities have been replaced by 'enabling conditions', with an enhanced focus on strategic and planning frameworks and more tangible corresponding fulfilment criteria, bringing a targeted set of requirements for more effective Cohesion Policy support. Compared to the 2014-2020 period, (1) there are fewer conditions, (2) conditions are monitored and applied throughout the whole programming period, and (3) thematic enabling conditions are more focused on specific fund objectives.

There are four horizontal enabling conditions, in the areas of public procurement, state aid, the application of the EU Charter of Fundamental Rights and the implementation of the United Nations Convention on Persons with Disabilities. They are applicable to all specific objectives and all Common Provision Regulation (CPR) Funds.

---

[2] The infringement conditionality (2000-2013) required that all ERDF, ESF and – from 2007 – Cohesion Fund spending be compliant with applicable EU law and allowed the Commission to refuse any payments concerning a reasoned opinion on infringement procedures. The macro-economic conditionality (1994-2013) applied exclusively to Cohesion Fund recipients required an economic convergence programme and no excessive government deficits, without a direct link to national Cohesion Policy strategies.

[3] 47 ex-ante conditionalities, out of which 36 were for Cohesion Policy funds including general and thematic ones.

- General ex-ante conditionalities (GExAC): 7 horizontal types of preconditions applying to all ESI Funds and covering anti-discrimination, gender, disability, public procurement, state aid, environmental legislation, and statistical systems/result indicators.
- Thematic ex-ante conditionalities (TExAC): 29 TExAC linked to the 11 thematic objectives and investment priorities of policy Funds; as well as 7 TExAC associated with the Union Priorities of the European Agricultural and Rural Development Fund (EARDF); and 4 TExAC relating to the European Maritime and Fisheries Fund (EMFF).

There are also sixteen thematic enabling conditions[4]. Each of them is linked to a specific objective and is automatically applicable where the specific objective is selected for support in programmes.

An enabling condition is fulfilled where all the related criteria are met. If an enabling condition is not fulfilled, the Member State concerned may declare expenditure, but the Commission will not reimburse it until the enabling condition is fulfilled. Eliminating the assessment of whether the condition applies and the requirement to have pre-agreed plans to fulfil the condition led to less administrative burden and more transparency.

Macro-economic conditionalities and links to country-specific recommendations

In the 2014-2020 period, the macro-economic conditionality framework was revised and reinforced by introducing the possibility for partial or total suspension of ESI Funds if a Member State failed to comply with EU economic governance procedures[5]. Suspensions were envisaged only for repeated failure to comply with Council recommendations to correct fiscal or macro-economic imbalances or for countries benefiting from financial assistance mechanisms.[6] The procedure was never used.

Links to country-specific recommendations were also strengthened as they had to be addressed in the Partnership Agreements and the operational programmes. The Commission could request the modification of a Partnership Agreement and programmes to support a new country-specific recommendation.

For 2021-2027, these conditionalities have been maintained – for supporting both the implementation of country-specific recommendations adopted by the Council and the Commission’s recommendations to help correct macroeconomic imbalances. A Member State failing to take effective action requested by the Commission to this end may face suspension of commitments and payments under certain conditions, after agreement from the Council. However, the application of the conditionality is limited in the context of Cohesion Policy: the ESF+ and Interreg are not subject to the macro-economic conditionality.

---

[4] They concern smart specialisation, energy efficiency of buildings, energy governance, renewable energy, disaster risk management, water and wastewater investments, waste management, natural habitats conservation areas, broadband, transport, active labour market policies, gender equality, education and training, social inclusion and poverty reduction, Roma integration, and health.

[5] The Excessive Deficit Procedure and the Macro-economic Imbalance Procedure.

[6] The legislation provides that the Commission could request that a Member State revise its ESIF programmes to support the implementation of Commission recommendations concerning the preventive and corrective arm of the Macro-economic Imbalances Procedure or for Member States benefiting from financial assistance under an EU mechanism.

The link to priorities in the European Semester has also been reinforced. A strong alignment is sought between the Partnership Agreements and programmes with the various steps in the European Semester. In particular, country-specific recommendations need to be taken into account in the process leading up to programme adoption and during the programmes' mid-term review.

Cohesion Policy programmes were oriented by investment guidance provided in the context of the European Semester (‘Annex D’ of the 2019 and 2020 Country Reports). Together with the country-specific recommendations, this guidance provided direction to both Member States and the Commission when negotiating new programmes.

The programmes' mid-term review, to be carried out by 31 March 2025, is also strongly linked with the Semester process. The Commission is expected to adopt updated investment guidance in the 2024 European Semester cycle to help steer the mid-term review of programmes.

Drawing from this reinforced coordination between growth-enhancing investments and structural reforms promoted through the Cohesion Policy and the Recovery and Resilience Facility (RRF), the Commission has recently put forward legislative proposals to reform the EU's economic governance rules.[7] The proposals focus on reducing debt, promoting inclusive long-term growth, and preparing for future challenges by supporting a green, digital, and resilient economy. Under the Commission’s proposal, Member States must create medium-term fiscal plans with targets and priority reforms, and clarify how they will ensure coherence with funding allocated to them under EU programmes. The proposed reform also introduces risk-based surveillance and safeguards for debt sustainability, strictly enforcing commitments for simplified governance and sustainable growth among all Member States. This will further anchor and synchronise the Cohesion Policy and the European Semester.

Rule of Law conditionality mechanism

This conditionality mechanism was introduced in the 2021-2027 Inter-institutional Agreement on the MFF as an overarching condition recognising and enforcing key values of the Union. The mechanism is designed to protect the Union budget by safeguarding EU financial interests in the case of breaches of the principles of the rule of law in the Member States. It also involves continuous evaluation and assessment. The mechanism applies to all Union programmes irrespective of its management mode but with different modalities of implementation Under the conditionality, the Commission will propose

[7] COM(2023) 240 final 2023/0138 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the effective coordination of economic policies and multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97

appropriate and proportionate measures to the Council in case rule of law breaches in a given Member State threaten the EU financial interests. While upholding the principle of proportionality, the mechanism involves significant flexibility in determining the appropriate measures to be implemented.

1.2 Benefits and limitations of conditionality mechanisms

Lessons learned point to a number of benefits, but also limitations of the coditionality mechanisms.

Enabling conditions

Benefits

- Minimum conditions applied for all Member States consistently throughout the entire period of programming and implementation
- Leverage for compliance with the EU acquis and respect of EU fundamental rights and values
- Enabling conditions have been a catalyst for reforms in the areas concerned
- Conditions known in advance allowing for timely preparation to start programme implementation quickly
- Effective use of funds by improving the investment ecosystem (e.g., planning strategies), supporting the implementation of country-specific recommendations, and enhancing capacity building and coordination among Member States' authorities
- Enhanced synergies with other EU instruments: e.g., smart specialisation strategies and Horizon Europe
- For affected specific objectives, sanctions are applied in a targeted and simple way
- Member States needing assistance to meet these conditions can benefit from support both from Cohesion Policy but also from other EU instruments, e.g., Technical Support Instruments (TSI).

Limitations

- Minimum conditions under a standardised approach may:
    - not reflect the specific features of national and regional institutional and legal frameworks and may show insufficient ambition in certain Member States, failing thus to address the identified investment bottlenecks;
    - penalise regions and other stakeholders for conditions not under their control, e.g. those conditions to be met at the national level (territorially blind), or penalise indiscriminately regions in case only a few of them would not meet the conditions;

    - have negative effects on contractors dependent on projects, as a prolonged period of unfulfilled conditions would increase business insecurity and overall economic prospects.
- Administrative aspects may be lengthy and disproportionate to the policy objective, possibly contributing to delays in starting and running the programmes.
- The link between the conditions imposed and the implementation of the funds is often weak.

Macro-economic conditionalities and links to country-specific recommendations

Benefits

- Macro-economic conditionalities are additional leverage for the Commission and the Council to encourage Member States to comply with economic governance rules
- Sound fiscal and macro-economic policies can increase the effectiveness of Cohesion Policy, address spending-related challenges and promote structural reforms for effective Cohesion Policy rollout

Limitations

- Sanctions may have a pro-cyclical effect by reducing fiscal space and further lowering investment levels.
- Since Member States have very different investment needs and financing capacities, sanctions may be disproportionate and may jeopardise convergence, possibly penalising regions/beneficiaries for macro-economic decisions at the national level.
- The macro-economic conditionality system principally acts as a deterrent. It has been applied only once, involving a partial suspension of the Cohesion Fund for a Member State in 2012 which was lifted before it could take effect in 2013.

2 Next steps – improving policy effectiveness through renewed conditionality mechanisms

Reflections on the necessary changes should consider lessons learned from Cohesion Policy conditionalities (macro-economic and enabling conditions), the evolution of the European Semester including its regional angle and experience with the rule of law conditionality.

Lessons from the Recovery and Resilience Facility, which provides financial incentives for investments and flanking reforms based on achievement of milestones and targets, could also be taken into account.

It is important to further strengthen links between investments under Cohesion Policy programmes and relevant reforms, complementing other policies and instruments. Ensuring a balance between regional needs and capacities, on one hand, and conditionality mechanisms, on the other, remains, however, essential.

Questions for debate

- Are conditionalities working? Should there be a more tailored and differentiated approach (including to horizontal conditions), e.g. in the function of the Member State, the specific objective concerned, and the sectoral investments envisaged? Should there be a regional angle, taking account of territorial-specific features?
- Should conditions be turned into a more ambitious plan for territorial sub-national reforms and differ across Member States and regions?
- Should conditions be replaced by a performance (or incentives)-based delivery mode (e.g., linking payments to results) in a context where links with reforms are further reinforced?

Annex

Overview of Ex-Ante Conditionalities and Enabling Conditions

Ex-Ante Conditionalities (2014-2020)

Ex-ante conditionalities have been established as part of the Cohesion Policy reform for the 2014-2020 programming period, to ensure more effective and efficient planning in key investment areas. The two necessary criteria were the presence of regulatory and policy frameworks, but also a strengthened administrative capacity (institutional public services at a national, regional and local level), before putting in place public and private investments. There were in total 7 general ex-ante conditionalities and 29 thematic ex-ante conditionalities.

Although around 75% of all ex-ante conditionalities were fulfilled by the time the programmes were approved, some 750[8]–were not (for example transport master plans underpinning transport investments). Where ex-ante conditionalities were not fulfilled, Member States had to prepare action plans presenting measures leading to the fulfilment of the conditions.

659 distinct action plans in 22 Member States were applicable to ERDF and Cohesion Fund investment priorities and had to be completed by the end of 2016. Several agreed action plans led to complex monitoring arrangements in Member States and at the Commission. Member States with the highest number of programmes, and decentralised systems of implementation of the action plans had to manage several action plans in the same area of investment.

Failure to deliver measures designed in action plans could lead to suspension of payments. Action plans at risk of non-completion were closely followed. The Commission sent warning letters to 13 Member States.

Finally, by mid-2018 almost all action plans were completed, except for 7 cases in 4 Member States, where the non-delivery of action plans triggered the procedure for the suspension of payments. For 2 programmes in 2 Member States, the procedure led to the actual suspension of payments. The last two cases of ex-ante conditionalities were considered fulfilled only in November 2022 and March 2023.

[8] Unfulfilled ex-ante conditionalities multiplied by a number of relevant programmes

Enabling Conditions (2021-2027)

Enabling conditions are one of the key elements of the Cohesion Policy for 2021-2027. They aim to ensure that the necessary conditions for the effective and efficient use of the Funds are in place. There are 2 types of enabling conditions: 4 horizontal (HECs), applied to all Common Provision Regulation (CPR) Funds, and 16 thematic enabling conditions (TECs), applied to the CF, ERDF and ESF+. During the adoption process of programmes, the Commission assessed enabling conditions for all programmes in all Member States.

In case of non-fulfilment of an enabling condition, expenditure related to operations linked to the related specific objective may be included in payment applications, but the Commission will not reimburse that expenditure until it considers that the enabling condition has been fulfilled.

Horizontal enabling conditions (HECs)

Considering 286 adopted programmes among 27 Member States that adopted at least one programme, only 2 countries have unfulfilled horizontal enabling conditions related to the Charter of Fundamental Rights. In general, more than 98% of HECs have been fulfilled. The amount affected by unfulfilled horizontal enabling conditions in adopted programmes is almost EUR 94 billion[9].

Thematic enabling conditions (TECs)

At the time of the adoption of the programmes, around two thirds of thematic enabling conditions were fulfilled. The amounts affected by unfulfilled thematic enabling conditions in the adopted programmes were around EUR 84 billion (around 22.8% of the allocation for the Jobs and Growth goal).

Learning from the implementation of ex-ante conditionalities from the 2014-2020 period, the CPR provision related to enabling conditions has been reformed to ensure that enabling conditions remain fulfilled and respected throughout the programming period. Hence, the CPR envisages specific procedures for the assessment of enabling conditions after programme approval:

- for enabling conditions that become fulfilled under Article 15(4) CPR; under this procedure 30 enabling conditions from 14 Member States have been fulfilled after programme adoption; 19 cases of enabling conditions in programmes in 9 Member States are still under assessment.

[9] In relation to HECs the amounts affected correspond to the amounts for all specific objectives covered by the Commission decisions on programmes adopted.

for enabling conditions that are no longer fulfilled under Article 15(6) CPR; under this procedure, one enabling condition was already assessed as no longer fulfilled.

With the progress made after programme approval, the rate of fulfilled thematic enabling conditions increased to more than 75%, while the amounts affected by unfulfilled thematic enabling conditions are estimated to have dropped to around 19% of the allocation for the Jobs and Growth goal.