



The implementation of the provisions in relation to the *ex-ante* conditionalities during the programming phase of the European Structural and Investment (ESI) Funds

Executive Summary



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Unit DGA1.01 Policy Development, Strategic Management and Relations with the Council

Contact: Peter Berkowitz

E-mail: REGIO-DGA1.01-HEAD-OF-UNIT@ec.europa.eu

*European Commission
B-1049 Brussels*

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EXECUTIVE SUMMARY

Background

This is the first **study examining the implementation of *ex-ante* conditionalities** (ExAC), as laid down in Article 19 of (EU) No 1303/2013 establishing Common Provisions for the European Structural and Investment (ESI) Funds with the intention of improving the effectiveness of ESI funding. The present final report summarises the results of the research and analysis carried out between October 2014 and December 2015.

Focusing on the programming phase for the 2014-2020 period, the study looked at how applicability and fulfilment of *ex ante* conditionalities have been reflected in Partnership Agreements (PA) and Operational Programmes (OP) of Member States and how the action plans provided by Member States will address the identified gaps in the fulfilment of the ExACs.

The study has drawn evidence from three sources:

- **Extensive screening** of all 28 PAs and 216 OPs at the time of their adoption or by 31 July 2015 (for the 13 OPs not yet approved by then). This includes all OPs with a European Regional Development Fund (ERDF) and/or Cohesion Fund component. The screening took place between January 2015 and the cut-off-date of July 2015.
- **A set of in-depth consultations** with Commission officials and a selection of Managing Authorities and National Government representatives (at least one interview per Member State).
- **An online survey** of Managing Authorities with 98 responses covering 109 OPs (and from 26 Member States). The consultations and the online survey were completed by July 2015 and reflect the situation with the *ex-ante* conditionalities at that time.

The analysis and views of the Member States and Managing Authorities present a snapshot at a time when the process of fulfilment was still going on in several Member States, especially the completion of action plans concerning the compliance of ExACs.

A steering group composed of members from different Commission services has managed the study. The draft final report has been shared with Member States and comments received have been taken into account in the final report.

The findings will provide an analytical basis for further reflections on the future of the policy.

***Ex-ante* conditionalities** fall into two categories:

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

The process of assessment has involved extensive dialogue between the Commission and Member States, with the issuance of guidance and support provided by the Commission to ensure fulfilment.

1. The applicability of *ex-ante* conditionalities

The study found that **all conditionalities, foreseen** in the regulatory frame, **proved relevant for all Member States'** specific objectives albeit to varying degrees. Apart from some exceptions, mainly linked to the general ExAC 'statistical system', **Member States confirmed the applicability of general *ex-ante* conditionalities, at national level, in the PAs. Thematic *ex-ante* conditionalities were mostly tackled at national or at national / regional level in OPs.** The most extensively applied thematic *ex-ante* conditionalities concerned 'smart specialisation', 'Small Business Act' and 'energy efficiency'.

The study identified a number of situations where **Member States did not report thematic *ex ante* conditionalities as applicable, without providing any justification**, though the investment priorities to which these *ex-ante* conditionalities were linked had been selected in the programmes. The analysis showed that in about a quarter of cases, the non-applicability of the conditionality was problematic. However, **interviews revealed that missing conditionalities resulted mainly from a misunderstanding** of Member States as to where applicable ExACs should have been reported.

The study found that social partners, NGOs and private organisations were involved in the assessment only to a certain extent, mostly through public consultation.

Whilst there was some initial misunderstanding from Member States regarding applicability, fulfilment and reporting of the *ex-ante* conditionalities, partly attributable to the timing and perceived lack of clarity of guidance and the evolution of a new process, **there has been general agreement between the Commission and Member States over the applicability of general and thematic conditionalities.** Discussions held between Member States and the Commission dealt with situations/issues requiring clarification.

2. The fulfilment of *ex-ante* conditionalities

The analysis showed that the **fulfilment rate for general *ex-ante* conditionalities** at the time of the programme adoption was **rather high at approximately 75%**. However, only eight Member States, mostly from EU-15, managed to fulfil all general conditionalities before the programme adoption or before the cut-off date of the study.

Member States reported most difficulties in relation to arrangements for **state aid** implementation. Particular **challenges emerged around statistical systems and public procurement.** In many Member States, statistical systems were developed in parallel with the OPs and these processes affected the cases of none or partial fulfilment. In all of these cases, implementation actions has been the single biggest constraint on fulfilment and has been the focus for actions at Member State level to ensure fulfilment.

Regarding the **fulfilment of the thematic ExACs** at OP level, the share of the applicable and fulfilled conditionalities **was around 58%**. Only 15% of applicable conditionalities were assessed as not fulfilled. **The best ratings in terms of fulfilment were achieved** in the case of conditionalities related to **self-employment, co-generation of heat and power and renewables**. A large part of **non-fulfilment** at PA level **applies to** conditionalities involving **'hard' environment and transport sectors** (water and railways in particular) as well as **the smart specialisation strategy, health strategy, active ageing** as well as **early school leaving**. The assessment did not show any improvement in fulfilment either for the water or the transport sector of ExACs during the process of PA adoption and OP adoption.

A positive correlation between the number of conditionalities applied by the Member States and the number of not fulfilled ones was found by the study. The share of fulfilled and partially fulfilled TExACs was highest for more developed and transition regions.

The fulfilment of thematic conditionalities is inherently more challenging, resource intensive, politically complex (there was a view that this was not always appreciated by the Commission) and time consuming. **Only three Member States had all thematic conditionalities fulfilled at the completion of the screening process for this study**. This partly reflects the difficulties faced by those responsible within Member States due to the complexity of some conditionalities and an unexpected need for additional resources for the effective fulfilment, e.g. developing and evidencing new strategies, the processes involved in stakeholder engagement etc. In general, EU-13 countries, with less capacity and limited track record of regional development programmes had lower levels of fulfilment.

The analysis showed that **Member States applied different approaches and undertook many types of actions to fulfil *ex-ante* conditionalities**. For general conditionalities, these were mostly related to a combination of implementation steps at national level (e.g. the designation of specially authorised personnel on matters concerning anti-discrimination or gender equality), capacity building for state aid, gender equality, legislative changes for public procurement and environmental legislation.

The most difficult criteria to fulfil were those **relating to capacity building and monitoring mechanisms**. Half of the actions undertaken to fulfil thematic ExACs are related to the development of strategies and policy frameworks, followed by implementation measures and legal changes.

Some differences in the approach between more developed and less developed regions exist. **More developed regions mostly adapted existing strategies and action plans rather instead of developing specific approaches** in order to fulfil conditionalities as it occurred in most of the less developed regions.

The fulfilment of the conditionalities often required additional resources which was not easy to secure, especially in the context of austerity in several Member States (e.g. the fulfilment of employment related conditionalities was linked to the increase in the capacity of public employment services). In some cases, **legislative changes** were needed including environmental legislation and state aid, which also **took time and resources**.

The fulfilment of conditionalities concerning **policy and strategy development and consultations with stakeholders** also had **resource implications that Member States have sometimes struggled to address**. Not surprisingly, a number of thematic conditionalities were partially rather than wholly fulfilled at the time of the research. At

the beginning of the process, the complexity and resources required to fulfil the thematic conditionalities had been underestimated most probably by both sides.

Regarding the assessment of fulfilment, the study came across examples of disagreements between Member States and the Commission over the scope and coverage of activities to fulfil investment preconditions (the need to involve national and regional bodies was not obvious in many cases). The example of smart specialisation was mentioned in several interviews with the Commission promoting new strategies, in contrast to Member States proposing adaptation of existing strategies. Health strategies, early school leaving as well as transport and environmental infrastructure have also proved to be challenging thematic conditionalities.

3. Action plans

Action plans must be developed for applicable conditionalities that Member States assess as not fulfilled and they must include a timetable for carrying out and ensuring the fulfilment of conditionalities by the end of 2016. This provision has allowed OPs to be approved and adopted. The study found that **the requirement to provide action plans was generally met**, although there were some mistakes in reporting and **there is scope for improving the quality of some of the action plans**.

The majority of Member States provided action plans for general and thematic conditionalities at either PA or OP level amounting to a total of more than 700 distinct action plans. For example on smart specialisation, 20 Member States have an action plan to fulfil this conditionality. Unsurprisingly, the general conditionality related to the statistical system had the highest number of action plans.

Responsibility for fulfilment of action plans for general *ex-ante* conditionalities is mostly set at national level, with the exception of public procurement and statistical systems, where regional authorities are also involved. For thematic conditionalities the situation is reversed and regional authorities have a greater role to play, especially in the case of the fulfilment of criteria related to capacity building and monitoring systems. National authorities are mainly responsible for action plans concerning infrastructure and capacity building as well as smart specialisation.

The screening showed variations in **the timing of fulfilment of the action plans**. The majority of them were reported to be due by the end of 2015. However, the analysis suggests that some of the current action plan deadlines could be unrealistic, and that several initially indicated deadlines have expired already without the action plans having been implemented. This concerns particularly legal processes or involvement of multiple stakeholders including regional authorities.

The complexity of the actions required to fulfil *ex-ante* conditionalities ranges from relatively minor adjustments to key indicators, capacity building and training measures especially at national level, and the implementation of new statistical systems. Similarly, the comprehensiveness and level of detail of action plans varies with multiple action plans required in some cases to tackle specific issues. **To fulfil thematic conditionalities, mostly strategy development and implementation measures are foreseen** under the responsibility of national and regional/local governments, and with the involvement of national and sub-national departments.

Significant prejudice

There is a provision to suspend payments to Member States if it is considered that there is a significant prejudice to the “effectiveness and the efficiency of the achievement of specific objectives concerned”. To date, no such suspensions by the Commission have been imposed, although there have been examples of self-suspension by Member States to avoid a formal suspension (e.g. a case in Portugal concerning the implementation of the Energy Performance of Buildings Directive).

4. The implementation process

The assessment of applicability and fulfilment of the ExACs has been a new element and it has thus been a learning process for all stakeholders involved.

An initial challenge for the European Commission DGs dealing with ESI Funds was to make sure that the Member States/Managing Authorities understand the importance, objectives and priorities of the assessment process and its expected outcome.

During programming, **Member States/Managing Authorities raised the issue of inconsistency between Partnership Agreements and Operational Programmes** as the PAs had been developed and approved much earlier than OPs. This led to a situation where the fulfilment of some conditionalities could not be confirmed on time at national level and Member States had to find a way to ensure the timely submission of the PA.

At first there were some initial misunderstandings regarding the applicability of the general ExAC in the OPs, which were resolved in the course of the process. Indeed, there were some uncertainties as to the level (national / regional) at which the applicability had to be reflected (PA / OP). In addition, the reporting of thematic conditionalities at PA and/or OP level has been a source of confusion, which was cleared through discussions between Member States and the Commission.

Still, there is evidence of both duplication and gaps between PA and OPs. Despite this, there have not been any major disagreements between the Commission and Member States/Managing Authorities in assessing the applicability of the *ex-ante* conditionality with an exception of smart specialisation, where there have been exchanges of views about what constitutes the fulfilment of the conditionality.

In most cases, **the assessment of applicability and fulfilment was not undertaken/conducted separately** in terms of the involvement of stakeholders and the process of decision-making. The assessment of fulfilment was considered as more difficult than applicability. It was also noted that **due to the differences in approaches to programming, Member States did not follow the guidance in the same way and this led to differences in implementation.**

The effort to fulfil *ex-ante* conditionalities was considered to be high and sometimes disproportionate. This was reported by some Member States' representatives in interviews and web surveys, particularly by Member States where a large number of investment priorities had been selected in the OPs and more so where the number of thematic objectives was high in comparison to the programmes' resources. The same view was also expressed by Member States with a small ESI Funds allocations focusing on a couple of thematic objectives only, which had been required to adjust strategies and policy standards in order to fulfil the *ex-ante* conditionalities. A few

Member States (particularly those with smaller financial allocations) believe that the process would have been more efficient if it had focused on a limited number of ExACs.

Regarding the organisation of the ExAC process from a Member State perspective, it has been necessary to aggregate, merge and process a large volume of information from a number of ministries before submitting the OPs to the Commission. **Member States established specific working groups or meeting platforms in order to ease the communication flow amongst Ministries, agencies and regional governments.** Such activities were often difficult to manage.

Member States tended to provide rather limited and general information to the Commission about the assessment of fulfilment of *ex-ante* conditionalities. As a result, the Commission was unable to judge the level of fulfilment without requesting additional information.

In the interviews with the Commission, the lack of information to assess whether the planned actions will ultimately lead to the fulfilment of the relevant *ex-ante* conditionality was often mentioned.

The communication with the European Commission has generally been considered as very positive. Both interviewees and web survey responses underlined this positive assessment. However, based on the interviews with Member States it appears, particularly at the beginning of the programming period, that different DGs and even different units in the same Directorate General did not always provide the same interpretation of the draft regulations. This however improved following the publication of the guidance.

The guidance material provided by the Commission has generally been well received. For example, 81% of the web survey respondents stated that the guidance was somewhat or very useful. Nevertheless, there have been some issues regarding the sub-criteria specified within the guidance, which were criticised for going beyond the scope of the relevant regulation. For Member States / Managing Authorities **the assessment grid was the most valuable tool for completing the assessment.** In addition to the guidance material, meetings and training sessions, informal exchanges also took place to assist Member States. The informal dialogue was found not useful by less than a fifth of respondents to the web survey.

Some **Member States also expressed concern regarding the time available to implement the action plans.** Whilst the European Commission is monitoring and continuously following up the implementation of the action plans, it will not be clear until the Annual Implementation Reports are submitted in 2017 whether the action plans will have been completed.

However, the **general opinion of Member States/ Managing Authorities is that the ExAC process has been useful,** albeit very ambitious in terms of strategic reform for many Member States and for their cooperation with the EC regarding the shared management framework. Similarly, Commission desk officers think that **Member States are now better prepared for the implementation of cohesion policy investments** and have the necessary knowledge in view of this. They consider that overall the ExAC process has provided added value in some Member States that would have positive impacts beyond the ESI Funds programmes.

The establishment of *ex-ante* conditionalities for investments are in principle seen as positive, particularly by Member States with a high volume of ESI Funds. The reason for this view was that *ex-ante* conditionalities triggered changes at national and regional level, which would not have been put in place or would have happened at a slower rate. Furthermore, many of the EU-13 are still adapting their national and regional policy system in accordance with the cohesion policy requirements in order to implement structural funds more effectively and efficiently. Those Member States are prepared to adjust and willing to do so., In other Member States, the need for adapting their administrative arrangements became clear during the process.

The parallel involvement of national and regional levels in the implementation of *ex-ante* conditionalities led in some cases to situations that could hinder the application of the ExAC mechanism.

A suggestion to consider *ex ante* conditionalities concerning infrastructure investment in the field of education or health, focusing on the mapping of needs was provided and considered as important for the majority of web survey respondents.

Overall Conclusions

Although it is too early to assess the impact of the new mechanism of *ex-ante* conditionality in increasing the effectiveness of ESI Funds interventions, **it is already clear that their application has helped identify situations in which relevant regulatory, institutional or strategic preconditions for effective intervention had not been met at the time of programme adoption.** They have encouraged Member States to put in place necessary remedial actions and mobilise resources needed to address these issues. First indications are, therefore, that programmes have, in many cases, addressed at an early stage problems that would only have become visible once expenditure on projects had already taken place.

The process has also allowed the European Commission to engage in a dialogue with the Member States, resulting in an improved understanding of the situation on the ground, particularly in the newer Member States, such as Croatia.

In some countries, including many of the EU-15 Member States, the process has been viewed as providing less added value, although they appreciate the logic of the process. In particular, some Member States have taken issue with the time and resources required to complete the assessment, particularly in those countries where the level of EU funding is relatively small and all of the ExACs are fulfilled. Indeed, some Member States argued that **the proportionality principle has not been applied effectively, especially those with a lower EU funding.**

Nevertheless, there have also been very good reports of added value in the EU-15 Member States. For example, many Member States indicated that the ExAC process helped them in thinking more about their approach to R&D and innovation (e.g. Germany, UK and Sweden). Moreover, some of the Member States considered that the process resulted in better coordination between national stakeholders (e.g. Austria).

In many of the EU-13 countries, there were largely positive views on the added value of the *ex-ante* conditionalities. For example, it was noted that the *ex-ante* conditionalities helped in terms of identifying gaps/issues in the legal, regulatory and institutional environment, as well as ensuring compliance with EU directives. Moreover, it provided an

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important impetus for change and reform, by requiring action plans to be developed and implemented within strict deadlines.

Notably, the added value of the *ex-ante* conditionalities was not necessarily restricted to the ESI Funds and they may in fact have an impact on the effectiveness of investments from other funding sources.

Many of the frustrations with the 'process' felt by the Commission, Managing Authorities and other relevant actors, stem from 'growing pains' associated with new procedures and the unanticipated time and effort required to implement *ex-ante* conditionalities by all sides. As a general lesson to be learnt from the process, there is a broad agreement that **the conditionalities mostly add value and will result in a more effective and structured deployment of ESI Funds.**

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